

PAPERS AND DOCUMENTS
in connection with
UTAH LAKE RESERVOIR
THE COMPROMISE AGREEMENT
and a copy of
COURT FILES IN THE COLLAGE CASE

RECORD OF THE COUNTY COURT, SALT LAKE COUNTY, UTAH

Page 38, Book C.

August 12, 1874.

The following report made by Reuben Miller, Selectman, was approved and ordered entered of record:

Whereas many of the citizens of Utah county were of the opinion that the dam put in the Jordan River by Salt Lake County near the point of the mountain and near the line between Salt Lake County and Utah County did raise the water of Utah Lake and consequently would do much damage;

To ascertain these facts and to end future controversies the selectmen of Salt Lake County did employ surveyor Genl. J. W. Fox who did on the 22nd day of December 1873 put into Utah Lake a mark or post at or near Provo City, also one at American Fork, one in the Jordan River at the Lehi Bridge and another at the outlet of the Lake (Utah) or the head of Jordan River.

These marks or posts were put in when the water at said dam was lowered about twenty inches by the drawing of the head gates at said dam.

During the winter the head gates washed out by being helped by persons unknown and the water at said dam fell about the same height that it was before the dam was put into the river.

On the 7th day of March, 1874 the Selectmen and Gen. J. W. Fox, accompanied by Bishop D. Evans and William Winn of Lehi, examined said marks or posts and found that the washing out of the head gates and lowering the water at said dam to the original height did not effect the water at the outlet of the Utah Lake or the head of the Jordan River.

of the difference of elevation between the established bench and the water in Salt Lake and further that the water in the lake and also a constant report to this Court regarding the water conditions, and finally with the data derived from the first section of the dam across the river, up to date.

On the petition of the citizens of Brigham Young County showing that in consequence of the use of the Great Salt Lake land property is already injured and more endangered that in the opinion of said this can be prevented to some extent by the letting of the waters of the lake onto the desert, and giving this Court to take the necessary steps to allow the possibility of such project, I. Clark stated that he had engaged the services of Frank E. Clark to assist on behalf of Salt Lake County and that he was expecting to start Sept. 2, 1876.

The Clerk was instructed to request of John E. Hilkey the report of the survey of the boundary county line between Utah and Salt Lake County.

RECORD OF THE COUNTY COURT, SALT LAKE COUNTY, UTAH

Page 293, Record G.

Sept. 19, 1876 - 10 a.m. Court met pursuant to adjournment.

Charles W. Hardy, Surveyor of Salt Lake County, made a report in regard to the expedition to the West shore of Salt Lake as follows: To the Honorable, the County Court of Salt Lake County.

Gentlemen: The expedition to whom was intrusted the project of searching for an outlet on the desert for the water of Salt Lake, returning, beg to submit the following report: The party, consisting of David L. Davis, captain, and John F. Hardy, firstmate, of the yacht Waterwitch, Henry A. Tuckett, member of Salt Lake Yacht Club, Levi Reed and Charles W. Hardy, County Surveyor of Salt Lake County, set sail from Centerville,

David Canning, on Friday, September 2, 1876 in the launch Waterwitch, which was provisioned for eight days, and arrived at Providence Bay on the Northeast corner of the Church Island at 6:30 A.M. p.m., good and safe harbor, Saturday 9th, then direct to Strong's Knob, now an island, separated from the main land to the South by a body of water eight miles long and about two miles wide, and to the East by a body of water four miles to seven miles long and about two miles in width. This Knob at the time that Stansbury (1875) made the survey of Salt Lake, formed a detached portion of the Western shore of Salt Lake.

From Strong's Knob an extensive and well-developed sheet of water and lake shore is met, both to the East and Southwest. The shore line immediately East and Southwest of the Knob, as marked on Stansbury's chart, is distinctly traceable over which the water has broken and now extends out onto the desert, in a Southwesterly direction from fifteen to twenty miles. On the most prominent point of this Knob we discovered in a good state of preservation, a telegraph station erected by Stansbury during his survey of the lake. From the point of a small crescent shaped island, about nine miles to the Southwest of Strong's Knob,

Sun. 10 run as near to the western shore as the depth of the water would permit, where we commenced that unpleasantly fatiguing and oft complained of process of getting ashore, mentioned by Stansbury and scientifically termed the "wading packing method." Proceeded by land to the present extreme Southwestern limits of the water of Salt Lake where take up and continued a line of levels on to the desert for three and one fourth miles. Also at right angles to this

line one mile find a general and continuous inclination of the ground to the Southwest of from four to six inches to the mile.

This gives to the waters of the Lake an undisturbed extension in this direction, dependent only upon a slight rise above its present level.

Nov. 11th. Coasted along the West shore some forty miles to the Northwest corner of the Lake where continued our search for an outlet but did failed to discover a place where such a project would be feasible.

Monday 12th. Set sail on our return via First Rock Bay, Fremont Bay, and Miller's Island and arrive in Salt Lake City at 7 o'clock p.m. on Wednesday, 13th.

Very respectfully,

Salt Lake City
Sept. 19th, 1876

Geo. W. Hardy

RECORD OF THE COUNTY COURT, SALT LAKE COUNTY, UTAH

Page 306, Record C.

Nov. 2, 1876. Court met. Full board present. The following report of Jesse W. Fox was received and read:

To the County Court of Salt Lake County.

Gentlemen:

In response to your communication of September last, calling for a report of the difference of the elevation of Utah Lake at the various times when taken, I respectfully submit the following:

After the dam was constructed across the Jordan River, which raised the water at said dam 10 feet, I, by your request, on the 11th day of June, 1876 took the difference of level between the surface of the water at the outlet of Utah Lake and at the dam, and found there

was a fall of 2 feet and 4 inches in a distance of about $7\frac{1}{2}$ miles. Since then the dam has settled 1 foot and 2 inches, making a difference at the present time of $3\frac{1}{2}$ feet between the outlet of the lake and the dam. When the water at the dam was at its full height, I established benches along the shore of Utah Lake, one at Provo on the 4th of December, 1873, 5 feet above water surface, one at Lehi bridge $4\text{--}1/10$ feet above surface of water in the river, and one at the outlet of the lake, 3 feet above water in the lake, Dec. 6, 1873.

About the 20th of January, 1874, the side dam gave way and the river dropped down to its original depth, and on March 7th, 1874, before the break was repaired and when the river was unobstructed, I tested the benches at Lehi and found the water in the Jordan at Lehi bridge $3/10$ of a foot lower and at the outlet of the lake $1/10$ of a foot lower than when the benches were established in December previous. The break having been repaired and finished about the 1st of July, 1874, I again, on the 3rd of August, 1874 tested the benches at Lehi and found the river at Lehi bridge $3/10$ of a foot higher and at the outlet of the lake $1/10$ of a foot lower than before the break was repaired. On the 9th of August, 1876 the benches at Lehi were again tested and I found the water in the lake $1\text{--}1/10$ feet higher and at Lehi bridge the water in the river was $1\text{--}4/10$ feet higher than when the bench was first established. We also determined that the high water mark of 1862 was 1.6 feet higher than the high water mark of 1876.

On Oct. 20th, 1876, we again tested our benches at Lehi and found the river at the bridge $4/10$ of a foot higher, and at the outlet of the Lake the same as when the benches were first established. We also, on the same day, measured the depth of the water at the old ford

on the Camp Floyd road and found the water to be 5-3/10 feet deep only.

We also determined that the water had been 1.2 feet higher making the highest water on the ford of this season 6.5 feet.

Very respectfully,

Salt Lake City
Oct. 30, 1876.

Jesse W. Fox

Page 312, Record C, Nov. 3, 1876,

The Court took up the petition of the citizens of Utah County signed by J. W. Lovelace and 267 others laid over at September Term and carefully considered the prayer of the petitioners, and made the following order, to-wit: The petition sets forth that the dam erected by Salt Lake County near the point of the Mountain, and near the county line South, in said River Jordan for irrigating purposes, dams back on Utah Lake and that it inundates the land along the shore of said Utah Lake, doing much damage to landholders, and for this, and other causes, should be immediately removed out of said river.

And inasmuch as this Court has taken proper and faithful measures to ascertain the true rise of water, as well before said dam was erected, as since, and have been careful not to claim the privileges granted by the acts heretofore passed by the Legislative Assembly of the Territory and are well assured that the water is not raised as high by about $3\frac{1}{2}$ feet as was contemplated by said acts, the dam erected being that much lower;

And are further assured on the full investigation of this matter, that no injustice is done to said petitioners, and most certainly none intended. The rise of water occasioned by said dam has been carefully ascertained by scientific and natural tests, and it

does truly appear that the dam erected and as it now is, does not raise the water any at the outlet of the Utah Lake, and consequently no citizen of Utah County is injured by the acts and doings of this Court, and in justice to all concerned the prayer of the petitioners is not granted.

RECORD OF THE COUNTY COURT, SALT LAKE COUNTY, UTAH

Page 269, Record 6

May. 10, 1877. Court met pursuant to adjournment. Present Hon. E. Smith, Judge, E. Haller, L. E. Stewart and E. M. Weiler, Selectmen.

The following resolutions were taken up:

To the Hon. County Court of Salt Lake County, U.T.

At a special session of the County Court of Utah County, U.T., held in this city on the 9th, 13th, and 15th days of February A.D. 1877, the following resolution was (on the last of said days) adopted, viz:

Whereas a petition of sixty prominent and influential citizens of this county has been presented to this Court, representing that a dam across the Jordan River near the line of Salt Lake and Utah counties is the cause of the raising of the water of Utah Lake which overflows and renders valueless large tracts of otherwise valuable farm, meadow, and pasture lands in this county; said dam having been constructed by the County Court of Salt Lake County, and the said petitioners being desirous of its removal without the vexation and expense of tedious lawsuits, and desiring the intervention of this County Court to endeavor to obtain an amicable arrangement of the matter; and

Whereas, after a careful and thorough inquiry into all the facts obtainable, this County Court are fully satisfied that the extreme high water of Utah Lake, and the consequent submerging of large tracts of land in this county are directly caused by said dam; and that

as a matter of simple justice to our citizens ought to be forthwith removed and the water of Utah Lake thereby permitted to recede naturally; and

WHEREAS, we are reliably informed that other citizens of our county, after petitioning the County Court of Salt Lake County for the removal of said dam, and their petition not having been granted are commencing suit against said county for damages done to their land by said dam; and

Whereas, from a published report of Surveyor General Rice upon this matter it appears that the information in the possession of the Salt Lake County Court is based upon surveys and levels of water, all made since the construction of said dam, and consequently furnish no data from which to calculate the rise of water caused by its construction have doubtlessly caused the County Court of Salt Lake County to infer that they have not damaged our citizens; and

Whereas, we regret that any of our citizens should feel impelled to commence suit against a neighboring county, and feeling assured that if the County Court of Salt Lake County were correctly advised of the facts as they exist that they would at once remove the cause of complaint; Therefore

Resolved that whilst we earnestly and solemnly protest against the action of the County Court of Salt Lake County in constructing said dam, to the damage of our citizens, we invite them to further inquire into the matter by ascertaining the relative heights of water in Utah Lake in similar seasons, both before and after the construction of said dam; and we strenuously insist that a careful examination into all the facts will show that said dam should be forthwith removed; and it is further,

Resolved that the Clerk of this Court forthwith furnish the County Court of Salt Lake County with a copy of this resolution.

I, Wilson H. Dusenberry, County Clerk in and for Utah County, Utah Territory, do hereby certify that the above and foregoing is a full, true, and correct copy of the original resolution now on file in my office.

Witness my hand and the seal of said Court this 15th day of February A.D. 1877.

(Seal)

Wilson H. Dusenberry, County Clerk

to which the Court made the following reply:

March 18, 1877

To the Hon. the County Court of Utah County,
Salt Lake City

Your communication transmitting your resolution and protest in relation to the dam in the Jordan River heretofore constructed, was received on the 16th ultimo and came up for consideration today in due course of business.

You say "That the information in the possession of the Salt Lake County Court is based upon surveys and levels of water all made since the construction of said dam".

How you have arrived at these conclusions is not for us to say, certainly the report of Surveyor Gen. Fox sets forth a different state of things.

We wish to state a few facts for your consideration. Several years before said dam was erected some of the (then) members of this Court assisted Surveyor Gen. Fox to level the river Jordan between the point where the dam is now erected, and Utah Lake. That leveling

proved the fact that 10 feet rise of water at said dam would not affect the Utah Lake, neither would it dam back as far as the Lehi bridge, but only about midway between the old Indian Ford and the Lehi bridge. Consequently it was deemed perfectly safe to erect a dam 10 feet high, no other means being devised or could in any possible way be arrived at to guide in the matter, only the means employed; and by ascertaining the fall in the river could operate safely and without injury of any person. When the dam was first completed the rise of the water was precisely 10 feet, but since then the dam has settled over one foot and the rise of water is now less than 9 feet, but the height between the surface of the water below the dam and the surface of the water on the top still measures about 10 feet. This is occasioned by the rocks in the river below the dam washing out, or away, and lowering the water, as the bench stake set at the time the dam was erected and carefully preserved will show.

The levels of water taken, and the benches set on the Utah Lake by Gen. Fox December 4, 5 and 6, 1873 was after the dam was constructed.

On or about the 20th of January, 1874, the side dam and head-gate gave way and in less than one day the river had as wide a channel and it run as free and unobstructed as though there never had been a dam erected. After it had run thus some six weeks and had ample time to run down, which it did in less than 12 hours, the benches and levels wet the fall previous, namely in December, were examined on the 7th day of March and the facts ascertained that the washing out of said dam and lowering the water down to its original level had no effect on the water at the outlet of the Lake and but a trifle at the Lehi bridge.

The benches were then examined and proper notes made preparatory

to the rebuilding of said dam.

The dam was rebuilt and completed about the 1st of July the same year and after the water had ample time to fill up the river and rise to its destined level, namely on the 9th of August, the benches and level were again tested and the facts fully demonstrated that the rebuilding of said dam and raising the water to its original level had no effect on the height of the water at the outlet of the lake or at the Lehi bridge.

Now, with all these tangible facts before you clearly demonstrated by all legal tests that science has put within the reach of mortals, your people are not satisfied and we are threatened with law.

The County Court and people of Utah County should attribute the rise of water in Utah Lake to climatic causes, the water of the Lake rises and recedes from those causes as in former years.

The resolution of your Court says: "and we strenuously insist that a careful examination into all the facts will show that said dam should forthwith be removed."

Hence, we infer from the spirit and letter of the resolution that the people of Salt Lake County are not to use the water of the River Jordan at this point at all, as no dam is allowed in the river by said resolution whether the same be high or low.

Now if it be true as you say that the dam causes the water to rise in Utah Lake (which we cannot admit), but say it does cause it to rise six inches or one foot, or 18 inches, then a dam correspondingly lower would certainly not effect the Lake and could injure no one, and justice would demand at our hands that said dam should be lowered accordingly, and this we would assuredly do, if we could be convinced of these facts.

We wish to say most respectfully that this Court and the people of Salt Lake County are not willing to acknowledge the authority of your court, and the people of Utah County to prohibit them in the erection of a dam or dams to irrigate their lands.

In the settlement of this new country, where irrigation is absolutely necessary, the settlers have the undisputed right to use the water in the streams for that purpose, where it is not used by others, by building dams to raise the water to such levels as will make it available and not interfere with or damage their neighbors; consequently the resolution of your county that the dam erected in the Jordan River for irrigating should be taken out of said river, is too oppressive, and aggressive, and being without authority, cannot be entertained for one moment.

The authority exists no where to order said dam out of the river entirely, let it be lowered if too high.

By the Court, and signed by the Clerk.

Page 751. Record C, July 20, 1880.

Whereas the water in Jordan River or the outlet of Utah Lake has been raised by the dam constructed therein to, and is now at the height required to supply the canals constructed on each side of said stream with a sufficient amount of water to irrigate the lands for which they are designed and have been or are being constructed; and

Whereas it is alleged that the construction of said dam in said outlet or river will cause the waters of said lake to overflow and submerge the lands, in places, adjacent to the shore of the said lake to the injury of the owners thereof;

It is hereby ordered by the County Court that Isaac M. Stewart, George Nebeker, Samuel Bennion, and George M. Spencer be and they are hereby appointed a committee in connection with Gen. J. W. Fox, the chief engineer of the several canals conveying and to convey water from the said Jordan River, to irrigate agricultural lands in said Salt Lake County, including Salt Lake City, to make a thorough examination of said lake at the present stage of the water and ascertain by actual measurement how much higher, if any, the water in said lake can be raised in an emergency without material injury to the owners of land along the shores of said lake. And, inasmuch as the Corporation of Salt Lake City is materially interested in the permanency of the reservoir which Utah Lake furnishes for the storing of water to be used for agricultural, manufacturing and other purposes when needed, the corporate authorities of said City are hereby respectfully and specially requested to appoint a delegation to accompany and join with those hereby appointed for making the proposed investigation.

Page 764, Record C. Sept. 27, 1893.

The following report was made, filed, and ordered published and one copy to be forwarded to the City Council: To the Honorable Judge and County Court of Salt Lake County.

Gentlemen:

Your committee appointed by your honorable body and by Salt Lake City Council to make a thorough examination of Utah Lake at its present stage of water and ascertain by actual measurement how much higher if any the water in said lake can be raised in an emergency without material injury to the owners of land along the shore of said Lake, beg to submit the following:

We have visited the Lake shore at Lehi, American Fork, Provo

and Spanish Fork and have conferred with parties interested and residing on the borders of said Lake and find by actual measurements that the water surface of the Lake on the 4th, 5th and 6th of August last was four and one tenth ($4\frac{1}{10}$) feet below high water mark of 1862 and that in June last the water in the Lake was (12) twelve inches higher (the gates of the dam being out) than it was at the date of our examination (the gates having been replaced).

And, from the testimony which we have before us for and against, we are of the opinion that to hold the Lake at its June height (I.E.) three feet below high water mark and utilize the same through the several canals in Salt Lake County during the season of irrigating but few if any would be materially injured.

Salt Lake City, Sept. 7, 1880

Jesse W. Fox
Isaac M. Stewart
George Nebeker
Samuel Sennion
J. S. Rawlins
Henry Dimmock
E. F. Sheets
Jos. F. Smith

RECORD OF THE COUNTY COURT, SALT LAKE COUNTY, UTAH

Page 815, Record C

Feb. 12, 1881. Court met pursuant to adjournment.

Upon request of the officers of the Utah and Salt Lake Canal Company, the Court directed the Clerk to communicate with John B. Millner, Chairman of a committee appointed by citizens of Utah County, who claimed to be injured by the dam in the Jordan River, requesting him to furnish the names of the persons so claiming to be injured, that the several canals in this County taking water from the Jordan River may know who the parties are thus claiming to be injured; that the extent of the damage complained of may be ascertained, the Clerk is directed to ascertain immediately.

July 8, 1881

Copy of a Resolution passed at a meeting of citizens at Provo City, Utah County, June 28, 1881;

Whereas, we are (as we believe) reliable informed that the Jordan dam has been constructed at the expense of and is mainly operated by Salt Lake County Court, thereby making it an interested party, and

Whereas an agreement was in May, 1877 entered into between leading citizens of this County and of Salt Lake County and assented to by the County Court of both counties, to the effect that so much of said dam should be removed as would permit the water of the Jordan to flow naturally at the Indian Ford Riffle; and

Whereas in the year 1880 said agreement was practically ignored by many of the parties interested in Salt Lake County; therefore,

Be it resolved that we decline to refer the matters in dispute to the arbitrament of the County Courts of Utah and Salt Lake Counties; but insist upon a compliance on the part of Salt Lake County or whoever may be interested in the Jordan dam with the agreement to restore the riffle at the Indian Ford to its natural condition, and that in the event that the parties controlling said dam fail to commence to remove the obstructions in the Jordan in compliance with said agreement by the 15th day of July, 1881, and to prosecute said labor in good faith, that we proceed ourselves to remove so much of the dam as will be a substantial enforcement of the said agreement, and that a copy of this be forwarded to the Hon. A. Gardiner, Chairman of the Salt Lake County Committee, one to the County Court of Salt Lake County and one to the Territorial Engineer for publication.

In addition to the foregoing, the following resolution appears

in the printed report of said meeting as published in the semi-weekly Inquirer of June 29, 1881. It was carried that, for the purpose of raising funds for such purposes as were deemed necessary, that each person claiming to be damaged shall make his own estimate of damages and that an assessment of one per cent of such estimate is hereby levied to be due and payable on the 16th day of July, 1881.

On motion adjourned until July 18, 1881, to meet at Court House at 10 A.M.

Wm. Matthew, Secretary

It is further ordered by the Court that a communication be sent by the Clerk to the Hon. J. B. Milner, Chairman of the meeting held at Provo on Saturday, June 25, 1881, requesting him to furnish the names of those claiming to be injured by the Jordan Dam and the amount at which they severely estimate the damages by them sustained.

Page 852, Record C

July 26, 1881, Court met pursuant to adjournment.

A communication from J. B. Milner of July 13, 1881 was presented, reading thus:

Provo, July 13, 1881

Hon. County Court of Salt Lake County,

Gentlemen:

Yours of the 9th instant received. I am unable to furnish you the names of persons claiming to be injured by the Jordan dam, as I do not know the names of more than a small part of them, and I have no means of stating the amount of damage of any person. I have endeavored to get a list, and may succeed perhaps. I do not know on what you rely when you write about an estimate of damages according to a resolution of a meeting of June 25th unless it is an action proposed to be

taken as a basis of assessments for our expenses. I hope to have access to such a list in the near future and will, on the first opportunity, communicate your request to the parties interested and furnish you such information I may happen to possess, as the interested parties are willing I may.

I will further say it will give me great pleasure to do anything I can see to be just that will tend to a settlement of this vexed question.

Very respectfully,

John B. Milner

P.S. On a ~~copy~~ of your note I see you sign as Co. Clerk and now correct this by addressing it to the County Court.

J.B.M.

Page 929, Record C

Fe. 3, 1882. County Court met pursuant to adjournment. Present Hon. E. Smith, Probate Judge, E. M. Weiler and Francis Armstrong, Selectmen; Theo McKee, Sheriff, and D. Beckholt, Clerk.

A recess was taken till 3 p.m. for consultation with parties from Utah County and others in relation to alleged grievances about the Jordan Dam.

At 3 p.m. the Court again assembled and without doing any business adjourned till Monday the 10th Inst. at 10 a.m. Feb. 10, 1882. At the hour to which the Court was adjourned to, there were present only two members, viz; E. Smith, Probate Judge and E. M. Weiler, Selectman, and at 12 o'clock M there being no quorum present, adjourned until February 14, 1882 at 10 A.M.

RECORD OF COUNTY COURT, SALT LAKE COUNTY, UTAH

Page 935, Record C.

March 10, 1882. Court met pursuant to adjournment.

The Clerk submitted a report from Col. M. M. Locke of observation of the waters of Utah Lake which was ordered filed and spread on the minutes.

Salt Lake City, Utah. March 9, 1882.

D. Bookholt, Esq.
Salt Lake City, Utah

Sir:

Under date of February 9, 1882, Hon. W. M. Dusenberry of the County Court of Utah County, Territory of Utah, instructed me to furnish you with a copy of my report to said County upon an examination of Utah Lake and Jordan River with a view to determine how far, if any, effect is produced upon said Lake by the dam, at "The point of the mountain, in said river. No formal report was ever made but from the original notes the following has been prepared. The examination was made April 9th and 10th, 1877, and conducted as follows: I proceeded from Pelican Creek, near Provo, in a skiff to the foot or North end of the Lake, taking soundings on the way, then took a cross section of the head of the river, after which proceeded down the river, taking the bearing every time the course of the boat changed. The distance of the course was approximately determined by noting the length of time the boat continued running thereon, the speed of the boat being observed at the same time.

Between the head of the river and the dam four cross sections of the river were taken, to-wit: 1st at the head of the river, 2nd about 1-3/4 miles further down, 3rd at the Lehi Bridge, and 4th, at the old ford. Subsequently Daniel Stark, Esq. County Surveyor of Utah Co.

made an approximate meandering of the river in the right, or East bank, which he reported to me. He also reported having taken the levels, but did not report the amount of the same. The meandering by myself embraced 47 courses, making a total distance of 11 miles 5005 feet, or practically 12 miles from the head of the river to the dam.

The velocity of the current was taken at the point where the second cross section was made and found to be 375 feet per minute.

The details of the four cross sections drawn to a scale of 40 ft. to the inch, the area of each is as follows:

1st Section,	922	square	ft.
2nd Section,	876	square	ft.
3rd "	1219	"	"
4th "	918	"	"

In regard to the area of the 4th cross section it is necessary to remember that it does not exhibit the proper area of a cross section at this point of the river as it is not at right angle to the axis of the section more than twice the proper width of the river, nor would it be proper to construct a cross section of the river from this data as the ford probably runs along a ridge in the bed of the river, and a cross section measured at right angle to the axis of the stream would probably show deeper points than any on the ford.

Prior to drawing any conclusions a few chemical facts should be stated: 1. As a general rule, where solutions of two compounds, which contain elements that when combined form insoluble compounds are mixed, such insoluble compounds actually do form and are deposited from the mixed solutions, for example, a solution of sulphate of iron (chalybeate water) and lime held in solution by carbonic acid (a common form of hard water) here the carbonic acid unites with the iron and the sulphuric acid with the lime, thus forming two insoluble compounds.

Conclusions

It is self-evident that in any stream whenever the velocity of the current increases, the sectional area decreased, therefore when we observe an increase of area in a stream (receiving no additional tributaries, and proper allowance being made for friction on the bottom) we know that the flow of the stream is retarded from some causes; the converse of this proposition is also true. Now at the first section we have a very large amount of bottom surface to the area, therefore a large amount of friction, thus reducing the relative amount of flow to the area of the section. At the 2d Section we have less proportional bottom surface and decreased sectional area, consequently increased velocity of flow which must be due to the fall in the river. At the 3d section we have still less proportional bottom surface but largely increased sectional area, with a consequent decreased velocity of current. The first impression produced upon the mind is that this is the result of backwater from the dam, but upon proceeding further down the river a ripple occurs a short distance above the old ford, showing that the backwater does not extend above that point and that the decreased velocity at the 3d section is due to a less fall in the river, or the bottom of the river being hollowed so as to produce the increased area, or both combined.

The backwater from the dam was found to extend up so as to effect the water at the ford, but not to obliterate the ripple above and consequently does not effect the flow of water from the lake.

Chemical agency is playing a very important part in the modification of Utah Lake for most of the waters entering the lake are remarkably free from sedimentary matter, and clear, but such is not the character of the water in the lake, it is invariably opalescent which

is due to the precipitate formed by the substances held in solution by the waters that empty into the lake. This precipitate is gradually filling up the lake causing the water to rise and overflow surrounding low grounds, but ultimately this will cure itself as the streams will cut channels in the deposit, thus forming themselves into direct tributaries or headwaters of the Jordan River, and as their channels become confined they will cut down into the material they themselves have made, and thus become channels of drainage.

These changes briefly stated are as follows: The lake will for a time continue to rise, then become a marsh, then undergo drainage and become firm ground. In geological investigations evidence of similar changes are frequently encountered.

I am sir, your obt. svt. etc.

Joseph M. Locke, C.E.M.E. etc

Book J, Page 261-262 Sept. 2, 1884:

UTAH COUNTY SUITS:

The Mayor stated for the information of the Council, that five suits had been instituted by residents of Utah County, viz: Israel Evans, James Aiken, Thos. C. Leathan, Richard Norman, and George Peay against Salt Lake City, as a codefendant with the various canal companies and parties in interest in the waters of the Jordan River and likewise in the Jordan Dam to-wit: Archibald Gardner-----Turner, Utah and Salt Lake Canal Company, South Jordan Canal Company, North Jordan Canal Company, and East Jordan Irrigation Company; and that the several summonses had been recently served upon him as Mayor citing him to appear before the District Court of the First Judicial District of the Territory of Utah, at Provo, to answer to the complaints filed in the several

actions, within the time allowed by law. That said actions were brought to abate and declare as a nuisance the Jordan Dam, and for that purpose that a writ of injunction be issued during the pendency of the action, and be made perpetual at the hearing, commanding the said defendants and each of them their agents and servants to absolutely desist and refrain from maintaining or continuing the said dam or any dam or obstruction in said Jordan River, to prevent or hinder the free and natural flow of the waters therein. That said plaintiffs have judgment against said defendants in various sums aggregating \$2400 damages claimed from the submerging of their lands by the waters of Utah Lake and costs in the several actions, and that the plaintiffs have such further or other relief in the premises as they might be found entitled to and as might be deemed most and according to equity. The mayor presented the summonses and complaints and asked what the Council desired to be done in the premises.

On motion of Councillor Wells the papers were referred to the Mayor, the Attorney and the Watermaster as a Special Committee to consult with the representatives of the other defendants in said action as to the best means of defense and said special Committee were also invested with power to act in such matter as in their opinion would best subserve the interests of the corporation.

**FIRST MEMBERS OF UTAH LAKE COMMISSION AS PROVIDED FOR IN THE
COMPROMISE AGREEMENT.**

From Utah County:

Mr. James Aiken, Provo
Mr. Israel Evans, Lehi

From Salt Lake County:

Mr. Robert T. Burton, Salt Lake City
Mr. Francis Armstrong, Salt Lake City

Umpire: Wm. R. Smith, Davis County

Secretary: John C. Mackay, Granger, Utah

**Other members of Utah Lake Commission I have known and worked with
include:**

Umpires: J. G. M. Barnes, Davis County
Isaac H. Green, Nephi, Juab County

Commissioners from Utah County: D. W. Thomas, Joseph E. Greer
A. B. Anderson, John W. Farrer,
E. S. Hinckley, Lorenzo Argyle,
J. B. Milliner

Commissioners from Salt Lake County: Peter Reid, A. F. Deramus,
O. P. Miller, W. H. Maigh,
Milton Bannion, Sylvester Q.
Cannon, W. A. Knight, H. B.
Woodbury.

Secretaries: George C. Lambert, Miles Miller.

/s/ W. A. Knight

COUNCIL RECORD, SALT LAKE CITY,
BOOK J

Pages 319 to 328 (inc.)

February 10th, 1885:

The special Committee appointed to represent the interests of the City in the Jordan Dam and Utah Lake Controversy, submitted the following report:

"Salt Lake City, Feb. 10, 1885

To the Hon. Mayor and City Council of Salt Lake City.

Gentlemen:

The undersigned, a special committee appointed by your Honorable Body to represent the interests of Salt Lake City Corporation in relation to the Jordan Dam and the waters of Utah Lake respectfully report that about the 8th day of August 1884 certain parties, residents of Utah County, and owners of land on the borders of Utah Lake, commenced legal proceedings in the District Court of Provo, by entering five suits against each of the parties in Salt Lake County interested in the dam, to recover damages amounting to about \$8,000 (this, however being only about one-half of the amount claimed). The owners of the dam are Salt Lake City, Salt Lake County, the South Jordan Canal Company, North Jordan Canal Company, East Jordan Irrigation Company, and the Utah and Salt Lake Canal Company. A meeting of the above parties was called and after due deliberation it was decided that each party defend its respective interests. Accordingly, answers to the several complaints were prepared by the respective attorneys and filed in Court. Before the cases came on for hearing, a proposition was made to submit the whole matter to a board of arbitration composed of six members from Utah County and six members from Salt Lake County with Presidents John Taylor and George Q. Cannon to preside. This proposition was accepted and all

parties agreed to abide the decision: Said board convened at Prove on the 10th day of November 1884. Claims for damages amounting to about \$17,000 were presented for adjudication. The board remained in session three days and then adjourned for two weeks, so that all parties who desired to do so might have an opportunity to bring in their claims. The board met pursuant to adjournment, and continued in session two days, giving all parties the utmost freedom in presenting their respective claims, and after this long and patient investigation and mature deliberation, the board rendered the following decision:

CERTIFIED COPY OF CONTRACT BETWEEN THE LAND OWNERS ON THE SHORES
OF UTAH LAKE AND SALT LAKE CITY, et.al. - 1885

DECISION OF ARBITRATORS

FIRST - That the water-way of said dam shall be not less than seventy-two (72) feet including the uprights in said dam as at present constructed and that a plank or piece of timber six inches in height placed upon the top of the 4 X 6 pieces of timber already spiked to the floor or sill of said dam as appears according to the survey of said river made by Mr. A. F. Doremus in September, 1884, shall be considered and constitute the sill or base of said dam, and monuments shall be established or erected to perpetuate the same as an initial point.

SECOND - That the point as indicated by the three monuments at present located in said Utah Lake shall be and the same is hereby established as low-water mark.

THIRD - That at any time in each year, to be fixed by the Commissioners hereinafter provided for, the high water of Utah Lake shall have receded to a level of three feet three and one half inches above the low-water mark, as above established, the owners of said dam shall have the right without hindrance from any person or persons to cause the water of Utah Lake to be held back, by regulating said dam, not to exceed at any time the said three feet three and one half inches as established above the low-water mark and to use the said water as they may desire until such date, on or after the first day of October as the Commissioners hereinafter provided for shall decide. On which date the owners of said dam shall open the entire water-way of said dam, excepting the uprights, down to the sill or base and permit the said water to run free provided that if in any year on or after the 15th

day of March it shall be ascertained, by said Commissioners, that the fall of snow during the past winter has been light and if said Commissioners are of the opinion that the waters of Utah Lake will probably not rise during the current year to the highest level herein before mentioned then the said Commissioners shall permit the owners to raise the said dam to a height to be fixed by said Commissioners that will cause the waters of said Lake to raise to said level and that when it shall be ascertained by experience and observation that the owners of said dam can obtain all the water necessary for irrigation purposes by keeping the water-way of the dam open until the waters of Utah Lake shall have receded below the highest level mentioned, then said Commissioners shall require the water-way to be kept open until the water recedes to such level as the Commissioners shall deem sufficient to supply the owners of said dam with water.

FOURTH - That the owners of said dam shall be held responsible to the parties owning land upon the shores of Utah Lake for the payment of all damages sustained by said land owners of Utah County by any obstruction being placed therein contrary to the spirit and intent of this decision and the amount of said damages shall be determined by the said Commissioners herein-after provided for:

FIFTH - And should it be ascertained that the parties owning said dam cannot obtain sufficient water for irrigation purposes at the highest point designated in this decision then said water may be raised and said level increased to such height and on such terms as the representatives of all the parties interested may agree upon.

SIXTH - That on or before the first day of January in each year the companies and corporations or their representatives, owning said dam shall meet together and elect or appoint two persons and the

parties owning land along the shores of Utah Lake shall also meet on or before said date and elect or appoint two persons, and the four persons so elected or appointed shall meet together on or before the first of February in each year and elect or appoint one disinterested person who must not be a resident of either Salt Lake or Utah Counties. Provided that if the two Commissioners elected from each county cannot agree upon the fifth member of their board on or before the fifth day of February in each year then the Presidents of the Salt Lake and Utah Stakes of Zion shall elect a person to occupy that position, and the five persons so elected or appointed shall constitute the Commissioners herein mentioned. The compensation of said Commissioners shall be four dollars per day each, and their actual mileage, for the time expended. Upon the board being formed said Commissioners shall enter into bonds to the acceptance of the Probate Judge of Salt Lake or Utah County for the faithful performance of their duties and such Commissioners and in the case of disability, through death, removal or otherwise, of any of said Commissioners, said vacancy may be filled by appointment of the Presidents of Salt Lake and Utah Stakes until the next election so that no injuries may be sustained by any of the parties interested through any inaction of said Commissioners.

SEVENTH - It is further decided that the said canal companies shall have the privilege of cutting through the bar in the Lake at the head of the river and dredging the river Jordan and lowering it such a depth as by an accurate survey shall be considered proper so as to permit a more rapid flow of water and to secure to themselves a more reliable supply of water by being able to draw it from a lower level in the Lake than is at present possible - Provided a gate or dam is put in at a suitable place in the river or at the bar and thus be able to make

and maintain a reservoir in the interests of the canals and citizens of Salt Lake County and City as shall be permanent. Also to have a right to use Utah Lake as a reservoir with full right to maintain their dam as at present constructed and subject to the foregoing regulations.

EIGHTH - That the necessary expenses incurred in the adjustment and management of said dam and the height of the water in Utah Lake shall be paid by the owners of said dam and that the above named parties - namely Salt Lake County, Salt Lake City, Corporation, The Utah and Salt Lake Canal Company, The South Jordan Canal Company, The North Jordan Canal Company and The Draper or East Jordan Canal Company do hereby for and in consideration of the concessions herein specified and as a compromise and to cancel all claims for alleged damages or otherwise to this date will pay to the parties of Utah County the sum of Eight Thousand Dollars.

NOTE - The above decision was unanimous and all the interested parties agreed that its substance should be incorporated in an agreement to be drawn up by their attorneys and to be signed by all the parties, and the following contract was accordingly drawn up and signed.

AGREEMENT WITH REGARD TO UTAH LAKE

THIS INSTRUMENT, made this ____ day of _____, in the year of our Lord one thousand eight hundred and eighty-five between Joseph H. Collidge, et al., all of Utah County Territory of Utah, the parties of the first part and, Salt Lake County, Salt Lake City, The Utah and Salt Lake Canal Co., The South Jordan Canal Co., the North Jordan Dam and Canal Co., The East Jordan Irrigation Co., all corporations in Salt Lake County in said Territory, the parties of the second part,

WITNESSETH, That the said parties of the first part and each of them for and in consideration of the covenants and agreements hereinafter contained and the sum of Eight Thousand Dollars to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed and confirmed unto the said parties of the second part and to their and each of their successors and assigns forever the right to maintain the dam in the Jordan River known as the "Jordan Dam" situated at or near the boundary line between Salt Lake and Utah Counties as at present constructed. An opening or waterway through said dam to be left at all times free and open except as hereinafter specified for the passage of water as follows, to-wit: The width of said opening to be as at present established including supports and uprights, the whole width including such support being seventy-two feet more or less. The bottom of such opening or waterway in said dam to be six inches above or higher than the bottom of the opening or waterway in said dam as at present constructed when free from boards or temporary obstructions. Also the right free from interference or liability for damage to flow the lands of the said parties of the first part or either of them to the extent

which the dam as above described may cause the same to be flowed by the waters of the said Jordan River, Utah Lake or otherwise. Also the right in addition to the foregoing free from liability for damage, to flow the lands of the said parties of the first part, or either of them, to the extent which may be caused by placing obstructions in the waterway in said dam hereinbefore mentioned according to the limitations herein-after specified for the purpose of holding back or retaining the waters in Utah Lake at an elevation or height not to exceed three feet and three and one half inches above the points heretofore established and recognized as low watermark in said lake when the waters in said lake would otherwise naturally fall below such height or elevation that the water so held back might be saved for use by the said parties of the second part when needed. The lands as severally owned by the said parties of the first part hereinbefore mentioned and which may be affected by these grants are situated in Utah County adjacent or near to the Utah Lake in the Territory of Utah and are more particularly described in Exhibit "A" hereto annexed and made a part of this Indenture.

To have and to hold the said granted rights, easements and servitudes, together with all the rights and privileges in any wise pertaining thereto, unto the said parties of the second part and to their and each of their successors and assigns forever.

For the purpose of better carrying the foregoing into effect it is hereby mutually agreed by and between the parties hereto that on or before the first day of January in each year the parties hereto shall each respectively appoint two persons and the four persons thus appointed shall meet together on or before the first day of February in each year and elect an umpire a disinterested person who must not be a resident of either Salt Lake or Utah Counties and each of said persons be--

before entering upon the duties herein specified shall enter into bonds in the sum of Two Thousand Dollars for the faithful performance thereof to the satisfaction or acceptance of the Probate Judge of either Salt Lake or Utah Counties. The persons so appointed shall continue to act until others are appointed and qualified to succeed them.

The said persons shall constitute a Board and are hereby empowered as the legally constituted agents of the parties hereto, to determine and direct when and to what extent obstructions may be placed in the said waterway of the dam for the purpose of storing the lake with water for future use not to exceed the highest elevation hereinbefore specified.

Provided that if in any year on or after the fifteenth day of March it shall be ascertained by said Board that the fall of snow during the past winter has been light, and if the said Board are of the opinion that the waters of Utah Lake will probably not rise during the current season to the highest level herein before mentioned then the said Board shall permit the said parties of the second part to raise said dam to a height, to be fixed by said Board, which will cause the water of said Lake to rise to said level and if it shall be ascertained by experience and observation that the said parties of the second part can obtain all the water necessary for irrigation purposes by keeping the waterway of the dam open until the waters of Utah Lake shall have receded below the highest level mentioned then the said Board shall require the waterway to be kept open until the water recedes to such level as the Board shall deem sufficient to supply the said parties of the second part with water and

Provided further; That when at any time in each year to be fixed by said Board the high water of Utah Lake shall have receded to the

highest elevation above herein specified the parties of the second part shall have the right without hindrance from any person or persons to cause the waters of Utah Lake to be held back by regulating said dam not to exceed the elevation above mentioned and to use the said water as they may desire until such date on or after the first day of October as the said Board shall decide at which date the said parties of the second part shall open the entire waterway of said dam (excepting the uprights) down to the sill or base thereof and permit the said water to run free.

That the members of said Board shall each receive compensation at the rate of Four Dollars per day with actual travelling expenses which the parties of the second part hereby agree to pay.

It is further agreed that the said parties of the second part shall have the privilege of cutting through the bar in the Lake at the head of the said Jordan River and of lowering the same to such a depth as by an accurate survey shall be considered proper so as to permit a more rapid flow of water and to secure to themselves a more reliable supply of water by being enabled to draw it from a lower level in the Lake than is at present possible. Provided a gate or dam is put in at a suitable place in the river or at the bar and thus be able to make and maintain a reservoir in the interests of the parties of the second part that shall be permanent. Also to have a right to use Utah Lake as a reservoir with full right to maintain their dam as at present constructed and subject to the foregoing regulations

In witness whereof the parties of the first part have hereunto set their hands and seal and the said parties of the second part have each caused its corporate name and seal to be subscribed and affixed the day and year first above written

Utah County, U.T.

Lehi City, Jan. 23/85.

We the undersigned do hereby acknowledge that we have read and understand the contents of the foregoing document.

Jos. Y. H. Colladge
P. H. Allred
John Roberts
Isaac W. Fox
J. A. Thomas
G. B. Norman
Joseph J. Smith
Elisha H. Davis, Jr.
Elisha Davis, Sr.
William Clark
Israel Evans, estate
A. A. Peterson
William Hall
George Mordock
George Johnson

Thomas Fowler
James Allred
Robert Fox
Israel Evans
Richard Norman
Myron Smith
A. E. Lovewidge
Samuel Briggs
William Gates
Daniel W. Thomas
James Evans
Andrew R. Anderson
William Finn
Edward Smith
John Jacobs

Witnesses (Joseph H. Gates
(Elias A. Bushman

I hereby certify that the accompanying named persons personally appeared before me James Harwood, Notary Public for Utah County and Territory and that they are personally known to me and that they have of their own free will and choice signed the accompanying document.

Given under my hand and seal the date above mentioned.

(SEAL)

James Harwood, Notary Public

ATTEST: John C. Outler, County Clerk, Salt Lake Co.

UNITED STATES OF AMERICA

Territory of Utah)
) ss
County of Salt Lake)

On this 31st day of January A.D. One Thousand Eight Hundred and Eighty-Five personally appeared before me George D. Pyper a Notary Public in and for said County, Joseph S. Rawlins, President of the East Jordan Irrigating Company, and Henry W. Brown, Secretary of East Jordan Irrigating Company whose names are subscribed to the annexed instrument as parties thereto, personally known to me to be the same persons described in and who executed the said annexed instrument as parties thereto and

and duly acknowledged to me that they as such officers executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have herewith set my hand and affixed my Notarial Seal at my office, Salt Lake City and County, the day and year in this certificate first above written.

(SEAL)

GEORGE D. PYPER, Notary Public

UNITED STATES OF AMERICA

Territory of Utah)
) ss
County of Salt Lake)

On this 31st day of January A.D. One Thousand Eight Hundred and Eighty-Five personally appeared before me George D. Pyper a Notary Public in and for said County Charles B. Haun, President and James W. Fox, Junr. Secretary of South Jordan Canal Company whose names are subscribed to the annexed instrument as parties thereto, personally known to me to be the same persons described in and who executed the said annexed instrument as parties thereto and duly acknowledged to me that they as such officers executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have herewith set my hand and affixed my Notarial Seal at my office Salt Lake City and Co. Utah Territory the day and year in this certificate first above written.

(SEAL)

George D. Pyper, Notary Public

UNITED STATES OF AMERICA

Territory of Utah)
) ss
County of Salt Lake)

On this 18th day of March A.D. One Thousand Eight Hundred and Eighty-Five personally appeared before me George D. Pyper a Notary Public in and for said County E. Smith, Secretary of Utah and Salt Lake Canal

Company, whose name is subscribed to the annexed instrument as a party thereto personally known to me to be the same person described in and who executed the said annexed instrument as a party thereto and duly acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my Notarial Seal at my office, Salt Lake City and Co. Utah Territory; the day and year in this certificate first above written.

(SEAL)

George D. Pyper, Notary Public

UNITED STATES OF AMERICA

Territory of Utah)
County of Salt Lake) ss

On this 31st day of January A.D. One Thousand Eight Hundred and Eighty-Five personally appeared before me, George D. Pyper a notary public in and for said County, Archibald Gardner President of the Utah and Salt Lake Canal Company whose name is subscribed to the annexed instrument as a party thereto, personally known to me to be the same person described in and who executed the said annexed instrument as a party thereto and duly acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my Notarial Seal, at my office Salt Lake City and County, Utah Territory the day and year in this certificate first above written.

(SEAL)

George D. Pyper, Notary Public

UNITED STATES OF AMERICA

Territory of Utah)
County of Salt Lake) ss

On this 2nd day of February A.D. One Thousand Eight Hundred and

Eighty-Five personally appeared before me, George D. Pyper a Notary Public in and for said County, James Sharp Mayor and Heber M. Wells Recorder of Salt Lake City whose names are subscribed to the annexed instrument as parties thereto personally known to me to be the same persons described in and who executed the said annexed instrument as parties thereto and duly acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned as such officers of said City.

In witness whereof I have hereunto set my hand and affixed my Notarial Seal at my office Salt Lake City and County, Utah Ty. the day and year in this certificate first above written.

(SEAL)

GEORGE D. PYPER, Notary Public

UNITED STATES OF AMERICA

Territory of Utah)
) ss
County of Salt Lake)

On this Ninth day of February A.D. One Thousand Eight Hundred and Eighty-Five personally appeared before me George D. Pyper a Notary Public in and for said County, George M. Spencer, President and John C. Mackay Secretary of North Jordan Irrigation Company whose names are subscribed to the annexed instrument as parties thereto, personally known to me to be the same persons described in and who executed the said annexed instrument as parties thereto, and duly acknowledged to me that they as such officers executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my Notarial Seal at my office, Salt Lake City and County, Utah Territory the day and year in this certificate first above written.

(SEAL)

George D. Pyper, Notary Public

UNITED STATES OF AMERICA

Territory of Utah }
County of Salt Lake } ss

On this sixteenth (16th) day of February A.D. One Thousand Eight Hundred and Eighty-Five personally appeared before me George M. Cannon a Notary Public duly commissioned in and for said County Elias A. Smith, Probate Judge and E. M. Weiler, E. Holman and Jesse W. Fox Junior Selectmen for Salt Lake County, Utah Territory, whose names are subscribed to the annexed instrument as parties thereto personally known to me to be the same persons described in and who executed the said annexed instrument as parties thereto and duly acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned and as such officers of aforesaid Salt Lake County.

In witness whereof I have hereunto set my hand and affixed my Notarial Seal at my office in Salt Lake City the day and year in this certificate first above written.

(SEAL)

George M. Cannon, Notary Public

2013 - 2014

available and just, and the costs of this suit.

/s/ Robert A. Tamm
Attorney for Plaintiff

No. 2013

FILED
IN THE DISTRICT COURT
OF THE STATE OF TEXAS
COUNTY OF DALLAS
AT DALLAS, TEXAS
THIS 12TH DAY OF MAY, 2014

IN RE: THE ESTATE OF ROBERT A. TAMM, DECEASED
CASE NO. 14-00000

vs. THE STATE OF TEXAS

AND OTHERS, et al., Respondents

Charge of the Court to the Jury

CHARGE OF THE JURY You are exclusive judges of the facts in this case. It is your duty to weigh the testimony of the several witnesses and to pass upon their credibility. You will consider the manner of the witnesses upon the stand; their interest, if any, in the result of the action; whether their story is reasonable or unreasonable; whether or not they are contradicted by other witnesses; and from all the facts and circumstances before you determine from all of the evidence in the case what the truth is. No one can aid you in arriving at your conclusion as to the facts.

I charge you that the burden of proof is upon the plaintiff, and that the plaintiff must establish by preponderance of the evidence the material allegations of his complaint. If the weight of the evidence is with the defendants, or if it is evenly balanced, then your verdict must be for the defendants.

The plaintiff alleges in substance in his complaint that he is the owner of certain lands described in the complaint, about sixteen hundred acres in extent, which lie adjacent to that the defendants have unlawfully and without his consent erected dams and obstructions in said Jordan River near the outlet of the lake, and have thereby caused the water of the lake to be raised above its natural level, causing the waters of the lake to overflow the plaintiff's land to his damage, first, in that it destroyed the crops growing on the land to the amount of \$13,110.00; and also that it permanently injured the land by causing it to become swampy, and by depositing silt and other solid substances upon the surface, rendering it unsuitable to his damage to the sum of \$25,000.00; also, that by flooding said land near the dwelling house of the plaintiff, the family was rendered sick and the dwelling rendered dangerous to health and unsuitable for habitation, to the damage of the plaintiff to the sum of \$2,000.00.

A contest between the plaintiff and others on the one part and the defendants on the other has been introduced in evidence before you. Under the contest I charge you, as a matter of law, that the defendants had the right to maintain dams in the Jordan River by means of which they could raise the waters of Utah Lake three feet three and one-half inches above the low water mark in said lake recognized and established prior to 1891.

If you find from the evidence in this case that the plaintiff has been injured by reason of his land being overflowed, but that said land was overflowed when the waters of Utah Lake were not more than three feet three and one-half inches above such low water mark, then I charge you that he is not entitled to recover anything in this case, although you may find that the defendants obstructed the flow of water from said lake. If you find from the evidence in this case that the obstructions in the

fact of the defendants caused the water in said lake to rise more than three feet three and one-half inches above low water mark, and you further find that the Board called in the evidence in this case the Fish Lake Commission, had authorized, and directed the defendants to place such obstructions in said dam, then I charge you that the plaintiff cannot recover the the injury so inflicted.

While the defendant submitted in evidence the Board of agents, called the Fish Lake Commission, were authorized to determine and direct when and to what extent obstructions might be placed in the dam of the defendants for the purpose of raising water in the lake for the use of the defendants, and if they made a mistake and directed the boards to be put in so high in the dam for such time that the obstruction caused the water to rise above the compromise level, their action binds the plaintiff, but I charge you that the plaintiff is not bound by any instruction of said Board, or by their action to act. He is bound by whatever directions they gave.

I charge you that the Board of agents, or Fish Lake Commission, under the contract, had no authority to prohibit the placing of obstructions in said dam after the high water had passed in the season, and after the water had receded below the compromise level and before the first day of October, and that they had no authority to permit such boards or obstructions to be placed in said dam after the 15th day of March in any year until after the high water of the season was past, unless in their opinion the snow fall of the past winter was so light that the waters of the lake would probably not rise during the season to the compromise level.

I further charge you that the defendants had no right to place boards or obstructions in said dam between the first day of October and the 15th day of March in any year, or to maintain such boards if placed in the dam before that time, except by direction of the said Board of agents

called the Utah Lake Commission.

The instructions relative to placing plank or obstructions to said dam and dike, are subject to this modification: The defendants had the right, under the contract, to deepen and and alter and the natural obstructions in the channel of the Jordan River, and to build a new dam in addition to the one in the river in 1904, and under the contract had a right to remove the said dam, or to alter of the dam, or both of them, plank or obstructions that would not obstruct the flow of water in the river to any greater extent than the natural obstructions had theretofore obstructed or obstructed it. The will determine the fact, whether the plank, if any, that are placed to have been in the dam during the winter they, were there by direction of the Utah Lake Commission. If they were, the plaintiff cannot complain; if they were not, you will then determine whether or not these plank interfered with the flow of water to any greater extent than the natural obstructions that were in the river in 1904. If they did not, the plaintiff cannot complain; if they did, and were not there by direction of the Utah Lake Commission, then they were wrongfully in the channel, and if the plaintiff has been injured thereby, he is entitled to recover.

The first and most material question for you to determine, is whether or not the plaintiff has been injured by any act of these defendants. If you find that he has been injured at all, before you go further you must determine whether his injury is due to natural causes, or to the raising of the lake to the emergency level, or to the raising of the lake above the emergency level by the unauthorized acts of the defendants. It is only in the latter case that he is entitled to recover.

If you find from the evidence that the defendants obstructed the flow of the water through the Jordan River without the direction of the Utah Lake Commission, and to a greater extent than the natural obstructions in the

#2433 - Charge of Court to Jury

river being interfered with it, and you find that by reason of these obstructions or maintained by the defendants the water in the lake was raised more than three feet three and one-half inches above low water mark, and that the plaintiff was damaged thereby, then I charge you that he is entitled to recover such damage.

If you find that part of his land would be overflowed when the water was at three feet three and one-half inches above low water mark, and that another portion was overflowed when it was at a higher level, and that it was in fact raised by the defendants to a higher level, in the manner I have charged you, then he would only be entitled to recover the damage sustained by portions of the lake above the compromise level, and not by overflowing above that level.

Now, if you find that the plaintiff is entitled to recover, then I charge you that he would be entitled to recover in this action: First, the value of the crops destroyed by the overflow above the compromise level, if any such crops are shown to have been destroyed. I charge you, however, that if the crops were destroyed in 1931, then the plaintiff cannot recover for a crop which he did not have in 1931; but if a portion was destroyed in each year, then he would be entitled to recover for the whole amount destroyed in the two years, not exceeding the sum of \$13,240.00 in all on account of crops destroyed. If he is entitled to recover under the instructions heretofore given, you may also consider what, if any, permanent injury has been done to the lands of the plaintiff by reason of their being flooded above the compromise level. On this account your verdict cannot exceed the sum of \$13,240.00. I charge you that upon both of these items for the crops and the injury to the land, the plaintiff must prove the amount of his damage by testimony before you, and that you are not at liberty to speculate or guess at the amount of damage outside of the testimony actually before you. The third element of damage claimed is that plaintiff's

Charge of Court to Jury

family was made sick and his house rendered uncomfortable and unhealthy by reason of the overflow. If the flooding was wrongful, and the plaintiff entitled to recover under the instructions I have before given you, then you will consider the testimony under this claim. I charge you that upon this claim it is not necessary that the plaintiff should prove any specific amount of damages; but if you find that he has been wrongfully injured, and his family has been made sick by reason of the flooding and his home rendered unhealthy, then you may give him such damages upon this account as in your judgment you deem just, not to exceed the sum of \$5,000.00.

I charge you, as a matter of law, that the plaintiff has shown title to all of the land described in the complaint, except the amount of about ten acres on the southern portion of the section lands indicated on the map before you. As to those ten acres, I charge you that the plaintiff has not shown title.

I will require that you all agree upon a verdict in this case. When you have retired to your room select one of your number as foreman, and when you have agreed upon a verdict sign it by your foreman and return it into court.

Two forms of verdict have been prepared, one for the plaintiff, with the amount of damages left blank, which you will fill in when you have agreed upon it, if you find for the plaintiff; the other for the defendant--no cause of action.

Filed
Dec. 14/93
D. H. Feeny, Jr., Clerk

IN THE FIRST JUDICIAL DISTRICT COURT, UTAH TERRITORY
Provo, City, Utah, Dec. 14, 1893.

George T. Deay, Plaintiff)
vs) VERDICT
Salt Lake City, et al)

Be the Jury empanelled in the above entitled action find the issues in favor of the Plaintiff and against the defendants and assess the Plaintiff's damages at \$8,750.00.

/s/ V. D. Green, Foreman

Filed Dec. 14/93
D. L. Young, Jr., Clerk

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF UTAH TERRITORY - COUNTY OF UTAH.

GEORGE T. DEAY, Plaintiff

vs

SALT LAKE CITY, THE UTAH AND
SALT LAKE CANAL COMPANY, THE SOUTH
JORDAN CANAL COMPANY, THE NORTH JORDAN
CANAL COMPANY, and THE DRAPER OR EAST
JORDAN CANAL COMPANY, corporations,
Defendants

To said plaintiff and Warner and Warner Plaintiff's attorneys;

The defendants, Salt Lake City, the Utah and Salt Lake Canal Company, The South Jordan Canal Company, the North Jordan Canal Company and The Draper or East Jordan Canal Company, and each of them give notice that they intend to move the court to vacate and set aside the verdict found on the trial of the above action and the judgment rendered thereon, and for a new trial on the following grounds:

1. Irregularity in the proceedings of the court, the jury and the adverse party and for abuse of discretion by the court by which said defendants were prevented from having a fair trial.
2. Misconduct of the jury.
3. Accident and surprise which ordinary prudence could not have

guarded against.

4. Newly discovered evidence material for said defendants, which they could not with reasonable diligence have discovered and produced at the trial.

5. Erroneous charges appearing to have been given by the jury under the influence of passion or prejudice.

6. Inadequacy of the evidence to justify the verdict and that it is against law.

7. Errors in law occurring at the trial and excepted to by the parties making the application.

Said motion will be heard upon a statement hereafter to be submitted, as to errors mentioned in the 5th, 6th, and 7th specifications above, and upon affidavits as to the other causes, hereafter to be filed.

/s/ Richards & Richards

E. B. Hays

Attorneys for defendants

December 23, 1893

COMMENTARIES BY H. A. HARRIS

The motion for a new trial was denied and the attorneys for the defendants appealed to the Supreme Court. The decision of the Supreme Court appears in the "Utah Reports 11" of the year 1893, page 331. The Supreme Court reversed the judgment and ordered that the cause be remanded with directions to the Court below to grant a new trial and permit the parties to amend their pleadings, should they desire to do so, and on such terms as may be just. The decision was written by Justice Bartch and concurred in by Justice Morrill.

Nothing as far as I have been able to determine was ever done with this case. The Calladage Case which covered the same controversy was begun in June 1894 and carried to a conclusion, and this may be the reason that the Peay Case was dropped.

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*Cannot identify these items. They were in the file, and both names appear in parties defendant. W.A.Knight.		

IN THE DISTRICT COURT FOR THE FIRST JUDICIAL

DISTRICT, UTAH TERRITORY.

Salt Lake City, a Municipal Corporation, The Utah and Salt Lake Canal Company, a Corporation, the South Jordan Canal Company, a Corporation, the North Jordan Canal Company, a Corporation, and the Draper or East Jordan Canal Company, a Corporation,

Plaintiffs,

**vs.
Joseph H. Collado, et al.,**

DEFENDANTS.

Indorsements.

Said Plaintiffs complain of said defendants and allege:

1. That in the year 1882 the said plaintiff, Salt Lake City, at a cost of about two hundred and fifty thousand (\$250,000) dollars, constructed an irrigating canal from the Jordan River, at a point near the boundary line between Salt Lake County and Utah County, in Utah Territory, to the City of Salt Lake, a distance of about thirty miles. That the said canal is, and was at the time of its completion in 1882, eighteen feet wide at the bottom and three feet deep, and that it was and is of sufficient capacity to convey enough of the waters of the Jordan River to said Salt Lake City to irrigate seven thousand acres of land. That during the month of May, 1882, the said plaintiff, Salt Lake City, appropriated and diverted from said Jordan River, by means of said canal, enough water to fill the same, and that the water so diverted was, during the irrigating season of 1882, and during the irrigating season of each and every year since, has been used by the said plaintiff, Salt Lake City, and its inhabitants and grantees, for the irrigation of lands in Salt Lake County, for the purpose of growing crops of hay, grain and vegetables thereon, and for domestic use. That the water so diverted and appropriated was then, and now is necessary for

domestic purposes and for the irrigation of said lands, and that the same would be comparatively valueless without said water.

2. That in the year 1872 the plaintiff, The Utah and Salt Lake Canal Company, at a cost of about two hundred and twenty thousand (\$220,000) dollars, constructed an irrigating canal from the Jordan River, at a point near the boundary line between Salt Lake County and Utah County, in Utah Territory, to Pleasant Green Precinct, in said Salt Lake County, a distance of about thirty-one miles. That the said canal is, and was at the time of its completion in 1872, twenty feet wide at the bottom and four feet deep, and that it was and is of sufficient capacity to convey enough of the waters of the Jordan River to irrigate ten thousand acres of land. That during the month of June, 1882, the said plaintiff, The Utah and Salt Lake Canal Company, appropriated and diverted from said Jordan River, by means of said canal, enough water to fill the same, and that the water so diverted was, during the irrigating season of 1882, and during the irrigating season of each and every year since, has been used by the said plaintiff, The Utah and Salt Lake Canal Company, and its stockholders and grantees, for the irrigation of land in Salt Lake County, for the purpose of growing crops of hay, grain and vegetables thereon, and for domestic use. That the water so diverted and appropriated was then, and now is, necessary for domestic purposes and for the irrigation of said lands, and that the same would be comparatively valueless without said water.

3. That in the year, 1872, the plaintiff, The South Jordan Canal Company, at a cost of about one hundred and ten thousand (\$110,000) dollars, constructed an irrigating canal from the Jordan River, at a point near the boundary line between Salt Lake County and Utah County, in Utah Territory, to Hunter Precinct, in Salt Lake

County, a distance of about twenty miles. That the said canal is, and was at the time of its completion in 1875, fourteen feet wide at the bottom and three and a half feet deep, and that it was and is of sufficient capacity to convey enough of the water of the Jordan River to irrigate six thousand acres of land. That during the month of May, 1875, the said plaintiff, The North Jordan Canal Company, appropriated and diverted from said Jordan River, by means of said canal, enough water to fill the same, and that the water so diverted was, during the irrigating season of 1875 and during the irrigating seasons of each and every year since, has been used by said plaintiff, The North Jordan Canal Company, and its stockholders and grantees, for the irrigation of lands in Salt Lake County for the purpose of growing crops of hay, grain and vegetables, &c., and for domestic use. That the water so appropriated and diverted was then and now is necessary for domestic purposes and for the irrigation of said lands, and that the same would be comparatively valueless without said water.

4. That in the year 1880 the plaintiff, the North Jordan Canal Company, at a cost of about eighty thousand (\$80,000) dollars, constructed an irrigating canal from the Jordan River, at a point near the boundary line between Salt Lake County and Utah County, in Utah Territory, to Brighton Precinct, in said Salt Lake County, a distance of about twenty miles. That the said canal is and was at the time of its completion in 1881, fourteen feet wide at the bottom and three feet deep; and that it was and is of sufficient capacity to convey enough of the waters of Jordan River to irrigate six thousand acres of land. That during the month of May, 1881, the said plaintiff, The North Jordan Canal Company, appropriated and diverted from said Jordan River, by means of a canal, enough water to fill the same, and that the water so diverted was, during the irrigating

season of 1881, and during the irrigating season of each and every year since, has been used by the said plaintiff, The North Jordan Canal Company, and its stockholders and grantees, for the irrigation of lands in Salt Lake County, for the purpose of growing crops of hay, grain and vegetables thereon, and for domestic use. That the water so appropriated and diverted was then, and now is necessary for domestic use and for the irrigation of said lands, and that the same would be comparatively valueless without said water.

5. That in the year 1877 the plaintiff, The Reaper or East Jordan Canal Company, at a cost of about one hundred and forty-five thousand (\$145,000) dollars, constructed an irrigating canal from the Jordan River, at a point near the boundary line between Salt Lake County and Utah County, in Utah Territory, to Little Settlement Creek, Union Freewest, in said Salt Lake County, a distance of about twenty miles. That the said canal is, and was at the time of its completion in 1883, fifteen feet wide at the bottom and five feet deep, and that it was and is of sufficient capacity to convey enough of the waters of Jordan River to irrigate eight thousand acres of land. That during the month of May, 1883, the said plaintiff, The Reaper or East Jordan Canal Company, appropriated and diverted from said Jordan River, by means of said canal, enough water to fill the same, and that the water so diverted was, during the irrigating season of 1883, and during the irrigating season of each and every year since, has been used by the said plaintiff, The Reaper or East Jordan Canal Company, and its stockholders and grantees, for the irrigation of lands in Salt Lake County, for the purpose of growing crops of hay, grain and vegetables thereon, and for domestic use. That the waters so appropriated and diverted were then, and now are necessary for domestic purposes and for the irrigation of said lands, and that the same would be comparatively valueless without said water.

6. That in the year 1872 Salt Lake County constructed a dam in Jordan River, near the boundary line between Salt Lake County and Utah County, for the purpose of diverting the waters of said Jordan River from their natural channel and causing the same to flow through the said several canals of the plaintiffs for the uses and purposes aforesaid, and that in 1881 the said Salt Lake County transferred five-sixths undivided interest in said dam to the plaintiffs, who have ever since maintained the same for said purpose, and that its maintenance during all of said time has been and now is necessary to enable the plaintiffs to divert and use the said waters from the Jordan River as appropriated as aforesaid.

7. That Utah lake is a body of fresh water about thirty miles in length north and south, by fifteen miles in width east and west, situate between the Wasatch range of mountains on the east and the Squirrel range on the west. It is in a basin between said ranges of mountains, and receives the waters which flow therefrom. From the Wasatch range of mountains there is more copious drainage. The waters from the Wasatch range find their way to said lake through several water courses, among which are Provo and Spanish Fork Rivers. The only outlet from said lake is through said Jordan River. The meander line along the margin of said lake established in the Government survey, is and immemorably has been, the natural low-water mark. The cities of Provo, Springville and Spanish Fork are situate between said Utah lake and the Wasatch Mountains, and between said lake and said last named mountains is a large tract of arable and pasture land; all, or nearly all, of the same annually needs irrigation to render it productive, and said cities also depend on said streams for water supply. North of said lake for fifty miles or more, to the width on both sides of said Jordan River of twenty miles on an

average, the country consists of fertile lands largely occupied by cities and by cultivators of the soil. There are mountain streams running from the said Spanish range of mountains to said Jordan River, but none from the west. All of said country needs the water of said lake for irrigation, and depend and have immemorably depended altogether thereon by means of plaintiffs' said dams or in addition to the partial supply by the other said streams. The natural inflow to said lake and the natural outflow through said Jordan River, when not artificially changed, have heretofore maintained the waters of said lake at such stage that said meander line was its natural low-water mark. During the thirty years last past the population east and south of said lake has been constantly increasing. The settlers east of said lake during said period have diverted a portion of the waters of Snake and Spanish Fork Rivers for irrigation and other purposes, and this diversion has increased from year to year according to the advance of population and land improvement, and to maintain the water supply in said lake, dams have been immemorably maintained by said plaintiffs in said Jordan River, whereby the stage of water in said lake has been preserved as it was before, and would be but for the diversion of said waters from said Snake and Spanish Fork Rivers, and substantially so that said meander line has thus continued to be the low-water mark of said lake. It has been maintained by such means uniformly from year to year for the period aforesaid, by raising or diminishing the height of said Jordan dams as the quantity of water in said lake, as a place of storage, required.

8. To confirm and regulate the rights of those interested in said water, on or about the ____ day of January, 1885, the land owners on the east side of said lake, of one part, and said plaintiffs

for their own interests and to subserve the interests of the large population north of said lake, and having a right to and needing the waters of said lake, entered into a contract in writing, a copy of which is annexed hereto, made a part of this complaint and marked Exhibit "A." Said plaintiffs paid the consideration of eight thousand (\$8,000) dollars to the other parties to said contract, and have since in all things fully performed all the stipulations and conditions on their part to be performed and fulfilled. A part of said defendants executed said agreement, and all the others of said defendants claim under and through other parties to said contract who executed the same, and hold lands subject thereto, described in the schedule annexed to said contract.

9. Said plaintiffs aver that the point established and recognized as low-water mark in said lake, at and before the making of said contract and therein referred to as such low-water mark, was a mark on the bridge over Jordan River, commonly called said Bridge, situate a short distance below the point where said Jordan River issues from said lake, and which mark was placed on said bridge by Israel Evans many years before the making of said contract.

10. Said defendants dispute, and heretofore have disputed, that said mark is the low-water mark referred to in said contract, but that the said defendants so disputed said mark has only lately come to the knowledge of said plaintiffs. Said defendants dispute the right of said plaintiffs to maintain said dams with a view to storing water in said Utah lake up to a height 3 feet $3\frac{1}{2}$ inches above said low-water mark. In the assertion of said rights said defendants ^{forcibly} have wrongfully interfered with said plaintiffs' management of said dams for the maintenance thereof to store water to the stage aforesaid in said lake, by opening said dams and discharging the waters stored,

thereby wasting the same, to the great detriment and injury of said plaintiffs and of the population interested in the water supply through plaintiffs' said canals. That said defendants threaten in the future to continue such interference with said plaintiff's dune, and said plaintiffs greatly fear that unless they are restrained by the order and injunction of this Court, the said defendants will continuously in the future interfere with the management of said dune by said plaintiffs to maintain the stage aforesaid of said water, and thereby materially and irreparably impair the value of their said water rights; that plaintiffs will have only an inadequate remedy at law by a multiplicity of suits. Said defendants severally claim, as aforesaid, that said plaintiffs are not entitled to maintain said dune to the height and for the purposes aforesaid, threaten to bring action at law for the flooding of lands which they severally claim to own and which are naturally flooded by the maintenance of the water in said lake to the height aforesaid, the said lands being between the meander line aforesaid and the center of the said lake. That certain of the said defendants have already brought actions, which are still pending in this Court, or on appeal in the Supreme Court of the Territory of Utah, and unless said defendants are restrained by the order and injunction of this Court, said plaintiffs greatly fear that all or nearly all of said defendants will bring actions upon their said claims, which are, as plaintiffs are informed and believe, wholly without foundation; but the defense of such a multitude of suits is and will be attended with great annoyance and expense.

Wherefore plaintiffs demand relief and judgment in this action as follows:

1. That said plaintiffs have the right to maintain their said dams in the said Jordan River, and to raise the waters of said river and Utah Lake to the height of thirty-nine and one-half (39½) inches above said water mark on Lohi Bridge, indicating low-water mark of said lake, and maintain the same at said height.

2. That said water mark on Lohi Bridge, indicating as above stated, low-water mark of Utah Lake, may be established and confirmed as the low-water mark referred to in said contract.

3. That said plaintiffs have hitherto performed their part of the said contract and are entitled to the benefit of its provisions, and independently of said contract, by reason of the facts above stated, have the right to maintain said dams and the stage of water in said lake to the number line established in the Government survey and to the height aforesaid, and that they have not hitherto incurred any liability to said defendants, or either of them, for so maintaining said dams, or for the overflow of their lands in consequence thereof.

4. That the said defendants, and each of them, their agents, servants and employees, may be enjoined and restrained from any meddling or interference whatever with plaintiffs' dams in said Jordan River.

5. That said defendants, and each of them, their agents, servants and employees, be restrained and enjoined from commencing or prosecuting any suit or suits at law against said plaintiffs or either of them on any claim or complaint that said plaintiffs have in the past, by means of said Jordan dams, wrongfully raised the water in said Utah Lake, and thereby flooded said defendants' lands, or any of them, or caused injury or damage thereto by said means; and on the hearing that said injunction be made perpetual; and that

plaintiffs may have such other or further relief in the premises as shall be agreeable to equity.

Richards and Richards

Signed R. D. Hays

Subscribed and sworn

Attorneys for Plaintiffs.

Territory of Utah, }
Salt Lake County, } ss.

John R. H. Halliday, being first duly sworn, says: I am an officer of one of the plaintiff corporations, namely: President of The Utah Power Canal Company. I have heard read the foregoing Complaint and know its contents, and said Complaint is true of my knowledge, except as to the matters therein stated upon information and belief, and as to such matters I believe it to be true.

Signed John R. H. Halliday

Subscribed and sworn to before me this 11th day of June, 1904.

Signed J. T. Richards

Seal

Notary Public.

EXHIBIT "A."

THIS INSTRUMENT, made this _____ day of _____, in the year of our Lord one thousand eight hundred and eighty-five, between Joseph H. Galleigh, et al., all of Utah County, Territory of Utah, the parties of the first part, and Salt Lake County, Salt Lake City, The Utah and Salt Lake Canal Company, The South Jordan Canal Company, The North Jordan Canal Company, and the East Jordan Irrigation Company, all corporations in Salt Lake County, in said Territory, the parties of the second part, WITNESSETH: That the said parties of the first part and each of them, for and in consideration of the covenants and agreements hereinafter contained, and the sum of eight thousand dollars to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed and confirmed unto the said parties of the second part, and to their and each of their successors and assigns forever, the right to maintain the dam in the Jordan River, known as the "Jordan Dam," situated at or near the boundary line between Salt Lake and Utah Counties, as at present constructed, an opening or water way through said dam, to be left at all times free and open, except as hereinafter specified, for the passage of water, as follows, to wit: The width of said opening to be as at present established, including supports and uprights, the whole width, including such supports, being seventy-two feet more or less, the bottom of such opening or waterway in said dam to be six inches above or higher than the bottom of the opening or waterway in said dam as at present constructed, when free from boards or temporary obstructions. Also the right, free from interference or liability for damage, to flow the lands of the said parties or the first part of either of them, to the extent which the dam as above described may cause the same to be flooded by the waters of the said

Jordan River, Utah Lake, or otherwise. Also the right, in addition to the foregoing, free from liability for damage, to flow the lands of the said parties of the first part or either of them, to the extent which may be caused by placing obstructions in the waterway in said dam heretofore mentioned, according to the limitations hereinafter specified, for the purpose of holding back or maintaining the waters in Utah Lake at an elevation or height not to exceed three feet and three and one-half inches above the points heretofore established and recognized as low-water mark in said lake, when the waters in said lake would otherwise naturally fall below such height or elevation that the water so held back might be saved for use by the said parties of the second part when needed. The lands so severally owned by the said parties of the first part heretofore mentioned, and which may be affected by these grants are situated in Utah County, adjacent or near the Utah Lake, in the Territory of Utah, and are more particularly described in "Exhibit A," hereto annexed and made a part of this ¹¹ instrument.

To have and to hold the said granted rights, easements and servitudes, together with all the rights and privileges in anywise pertaining thereto unto the said parties of the second part, and to their and each of their successors and assigns forever.

For the purpose of better carrying the foregoing into effect, it is hereby mutually agreed by and between the parties hereto, that on or before the first day of January in each year the parties hereto shall each respectively appoint two persons, and the four persons thus appointed shall meet together on or before the first day of February in each year and select an umpire, a disinterested person, who must not be a resident of either Salt Lake or Utah Counties, and each of said persons, before entering upon the duties herein specified, shall enter into bonds in the sum of two thousand dollars

for the faithful performance thereof, to the satisfaction or acceptance of the Probate Judge of either Salt Lake or Utah Counties. The persons so appointed shall continue to act until others are appointed and qualified to succeed them.

The said persons shall constitute a Board, and are hereby empowered, as the legally constituted agents of the parties hereto, to determine and direct when and to what extent obstructions may be placed in the said waterway of the dam, for the purpose of storing the lake with water for future use, not to exceed the highest elevation hereinbefore specified. Provided, That if in any year on or after the 15th day of March, it shall be ascertained by said Board that the fall of snow during the past winter has been light, and if the said Board are of the opinion that the water of Utah Lake will probably not rise during the current season to the highest level hereinbefore mentioned, then the said Board shall permit the said parties of the second part to raise said dam to a height to be fixed by said Board, which will cause the water of said lake to rise to said level, and if it shall be ascertained by experience and observation that the said parties of the second part can obtain all the water necessary for irrigation purposes by keeping the waterway of the dam open until the waters of Utah Lake shall have receded below the highest level mentioned, then the said Board shall require the waterway to be kept open until the water recedes to such level as the Board shall deem sufficient to supply the said parties of the second part with water; and, provided further, that when at any time in each year, to be fixed by said Board, the high water of Utah Lake shall have receded to the highest elevation above herein specified, the parties of the second part shall have the right, without hindrance from any person or persons, to cause the waters of said Utah Lake to be held back by regulating said dam not to

exceed the elevation above mentioned, and to use the said water as they may desire until such date, on or after the first day of October, as the said Board shall decide, at which date the said parties of the second part shall open the entire waterway of said dam (excepting the uprights) down to the sill or base thereof, and permit the said waters to run free.

That the members of the said Board shall each receive compensation at the rate of four dollars per day, with actual traveling expenses, which the parties of the second part hereby agree to pay.

It is further agreed that the said parties of the second part shall have the privilege of cutting through the bar in the lake at the head of the said Jordan River, and of lowering the same to such a depth as by an accurate survey shall be considered proper, so as to permit a more rapid flow of water to secure to themselves a more reliable supply of water by being enabled to draw it from a lower level in the lake than is at present possible, provided a gate or dam is put in at a suitable place in the river, or at the bar, and thus be able to raise and maintain a reservoir in the interest of the parties of the second part that shall be permanent; also to have a right to use Utah Lake as a reservoir, with full right to maintain their dam as at present constructed and subject to the foregoing regulations.

IN WITNESS WHEREOF, the parties of the first part have hereunto set their hands and seal, and the said parties of the second part have each caused its corporate name and seal to be subscribed and affixed the day and year first above written.

NOTE-

The attached report of a special committee appointed by the City Council of Salt Lake City, to represent their interests in the Jordan Run and Utah Lake controversy, is not a part of the court file. But is attached to Exhibit "A", which is the agreement signed in 1865 as a result of the Arbitrator's decision, and for the purpose of showing the manner in which the Arbitrators arrived at their conclusions.

COUNCIL RECORD, SALT LAKE CITY,

BOOK 7

Pages 319 to 328 (inc.)

February 10th, 1885:

The special Committee appointed to represent the interests of the City in the Jordan Dam and Utah Lake Controversy, submitted the following report:

"Salt Lake City, Feb. 10, 1885

To the Hon. Mayor and City Council of Salt Lake City.

Gentlemen:

The undersigned, a special committee appointed by your Honorable Body to represent the interests of Salt Lake City Corporation in relation to the Jordan dam and the waters of Utah Lake respectfully, report that about the 8th day of August 1884 certain parties, residents of Utah County, and owners of land on the borders of Utah Lake, commenced legal proceedings in the District Court of Provo, by entering five suits against each of the parties in Salt Lake County interested in the dam, to recover damages amounting to about \$8,000 (this, however being only about one-half of the amount claimed). The owners of the dam are Salt Lake City, Salt Lake County, The South Jordan Canal Company, North Jordan Canal Company, East Jordan Irrigation Company, and the Utah and Salt Lake Canal Company. A meeting of the above parties was called and after due deliberation it was decided that each party defend its respective interests. Accordingly, answers to the several complaints were prepared by the respective attorneys and filed in Court. Before the cases came on for hearing, a proposition was made to submit the whole matter to a board of arbitration composed of six members from Utah County and six members from Salt Lake County with Presidents John Taylor and George Q. Cannon to preside. This proposition was accepted

and all parties agreed to abide the decision: Said board convened at Provo on the 10th day of November 1884. Claims for damages amounting to about \$17,000 were presented for adjudication. The board remained in session three days and then adjourned for two weeks, so that all parties who desired to do so might have an opportunity to bring in their claims. The board met pursuant to adjournment, and continued in session two days, giving all parties the utmost freedom in presenting their respective claims, and after this long and patient investigation and mature deliberation, the board rendered their decision: The agreement has been signed by both parties and is now ready to be placed on the County record. The sum of \$8,000, the amount named in the agreement has been paid to the First National Bank of Provo to be drawn upon the order of A.O. Sweet to be paid to the parties to whom it was awarded. By an agreement between the six parties interested, Salt Lake City pays \$2,000; Salt Lake County \$2,000; the South Jordan Canal Company, \$1,000; the North Jordan Canal Company \$1,000; Utah and Salt Lake Canal Company \$1,000; and the East Jordan Irrigation Company \$1,000; in all \$8,000. The \$2,000 paid by Salt Lake City we respectfully ask you to appropriate from the canal fund. In addition to the above award President John Taylor as Trustee in Trust, made a donation of 3,000 bushels of wheat to be distributed as follows: 1500 to assist those who lost their crops by high water in Utah County; 1000 bushels to aid the Utah and Salt Lake Canal Company in changing and lowering their canal and 500 bushels to be distributed to aid poor men associated with the several canals in Salt Lake County in paying their assessment. It will be seen by the agreement that hereafter the dam will be entirely controlled by a board of five commissioners, who have been elected and qualified for the year 1885, consisting of the following named gentlemen: For Utah County: James Aiken and Israel Evans;

for Salt Lake County, Robert T. Barton and Francis Armstrong; with the fifth man for umpire viz: Wm. R. Smith of Davis County. With the dam under the control and management of the above board we feel assured that the rights and interest of all parties will be maintained, and while the owners of land on the borders of Utah Lake will be protected the several companies will have a permanent reservoir in which to store water in times of scarcity. The Board have entered upon their duties and have established monuments by which to determine the low water points indicated in the agreement. The water in Utah Lake is two feet higher now than last year at this time and the prospects are that we shall have another season of high water. The inhabitants of both counties are to be congratulated on the peaceable and amicable settlement of this long-venued question, which for the last twelve years has threatened to involve the two counties in interminable litigation and expense. The inhabitants of both Counties are under great obligations to President John Taylor for his magnificent donation, and also for his untiring energy, perseverance and disinterestedness in laboring to bring this matter to so successful an issue.

James Sharp - Mayor
F.S. Richards - City Attorney
John R. Winder - Watermaster
Special Committee."

On motion of Councillor Grant the report was received, its recommendations adopted, the action of the special committee approved and ratified and the amount specified, viz: \$2,000 appropriated for the purpose named, \$2,000. 00.

IN THE DISTRICT COURT IN AND FOR THE FIRST JUDICIAL DISTRICT
OF UTAH TERRITORY, COUNTY OF UTAH

SALT LAKE CITY, ET AL.,
Plaintiffs,

vs.

SUMNER

JOSEPH H. COLLARD, ET AL.,
Defendants.

(On June 19, 1894, by order of Judge H.W. Smith, service was made on the defendants in the above captioned case by DANIEL W. MORAN, "a male citizen of the United States over twenty-one years of age, who is not interested in the matter in controversy in the action".)

IN THE DISTRICT COURT IN AND FOR THE FIRST JUDICIAL DISTRICT
OF UTAH TERRITORY, COUNTY OF UTAH

SALT LAKE CITY, a Municipal Corporation, ET AL

Plaintiffs,

vs.

JOSEPH H. COLLADGE, ET AL

Defendants

ORDER

On reading and filing the complaint of the said plaintiffs, in which they ask to be relieved, touching the matters therein set forth, and pray, among other things, for an injunction against the said defendants, on motion of Richards & Richards, E.B. Hoge and Sutherland & Hewat, attorneys for the plaintiffs, it is ordered that the defendants show cause, if any they have, why an injunction should not issue, according to the prayer of said complaint, before me, on the 8th day of September 1894, at Provo City, in said Judicial District, and that until the hearing and decision thereon the said defendants, and each of them, their agents, servants and employees, are enjoined and restrained from any meddling or interference whatever with the plaintiff's dams in said Jordan River; and the said defendants and each of them, their agents, servants and employees are restrained and enjoined from commencing or prosecuting any suit or suits at law against said plaintiffs, or either of them, on any claim or complaint that said plaintiffs have in the past, by means of said Jordan dams, wrongfully raised the water in said

Utah Lake, and thereby flooded said defendants' lands, or any of them, or caused injury or damage thereto by said means, or upon any such claim or complaint arising during the pendency of this suit; upon filing an undertaking of the said plaintiffs in the sum of Five Thousand Dollars, with two sufficient sureties, conditioned as required by the statute in such case made and provided. *This order does not affect any proceedings in case of Geo. T. Peay of Salt Lake City et al, heretofore tried in the District Court and now pending on appeal in the Supreme Court of Utah.*

H.W. SMITH

Judge.

Dated June 18, 1894.

The above starred sentence was written in long hand on original copy.
W.A.K.

It is hereby ordered that service of the within order may be made by Daniel W. Moran, a male citizen of the United States over twenty-one years of age, who is not interested in the matter in controversy in the action.

Signed H.W. Smith

Judge.

Dated June 19, 1894

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
UTAH TERRITORY-COUNTY OF UTAH**

Salt Lake City, et al,
Plaintiff,

-Ovs-

JOSEPH COLLADGE, et al,
Defendants.

UNDERTAKING

WHEREAS, the above named plaintiffs have commenced an action in the District Court of the First Judicial District of Utah Territory against the above named defendants and have applied for an injunction in said action against the said defendants enjoining and restraining them from the commission of certain acts particularly set forth and described in the plaintiff's complaint and in the restraining order of file herein, which has been granted by the Judge of said Court to take effect on the filing of this undertaking:

NOW, THEREFORE, we, the undersigned, residents of the County of Salt Lake, Territory of Utah, in consideration of the premises and of the issuing of said restraining order, do jointly and severally undertake in the sum of Five Thousand Dollars, and promise to the effect that the plaintiffs will pay to the said parties enjoined such damages not exceeding the sum of Five Thousand Dollars, as such parties may sustain by reason of the said restraining order, or injunction if the court finally decides that the said plaintiffs were not entitled thereto.

THE UTAH AND SALT LAKE CANAL COMPANY

Signed by Peter Reid Agent.

THE SOUTH JORDAN CANAL COMPANY

Signed by John D.H. McAllister Agent.

THE NORTH JORDAN CANAL COMPANY

Signed by John D.H. McAllister Agent.

THE DRAPER OR EAST JORDAN CANAL COMPANY

Signed by John D.H. McAllister Agent.

Signed Peter Reid Surety

Signed James H. Cochran Surety

Territory of Utah, :
 : SS.
County of Salt Lake :

Peter Reid and James H. Cochran, being severally duly sworn each for himself, deposes and says: That he is a resident and freeholder in the Territory of Utah and is worth the sum specified in the foregoing undertaking over and above all his just debts and liabilities exclusive of property exempt from execution.

Signed Peter Reid

Signed James H. Cochran

Subscribed and sworn to

before me this 19th day of June, A.D. 1894

(seal)

Signed Joseph T. Richards-Notary Public

"This band as to both form and Sufficiency of Sureties approve
June 20th, 1894."

Signed H.W. Smith
 Dist. Judge

"The above starred sentence was written in long hand on original copy--"
W.A.K.

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
TERRITORY OF UTAH**

Salt Lake City et al., Plaintiffs,

vs.

Joseph H. Collidge, Geo. T. Peay,

Peter Madison et al., Defendants.

Answer.

Come now the defendants, Geo. T. Peay and Peter Madison, and appearing for themselves alone, and for none other, and answering plaintiffs' complaint herein, allege:

1 - Deny that the meander line of Utah Lake as established in the Government survey is now, or at any time ever has been, the low water mark of said lake, natural, artificial, otherwise or at all.

Deny that through any agency, either by means of plaintiffs' dams, or otherwise, or at all, the stage of water in Utah Lake has been maintained or preserved so that the said meander line is, or ever has been the low water mark of said lake, or substantially so.

Allege that, at no time since the said meander line has been established, have the waters of said lake extended to the said meander line, except at irregular and unconnected times during the last past four years, and that, at and during each and all of said irregular and unconnected times, the waters of said lake have been raised and maintained by plaintiffs, or their agents, wrongfully, unlawfully and contrary to the express terms of the contract pleaded by plaintiffs and set out in plaintiffs' complaint and marked "Exhibit A".

2,-Deny that the contract as set out in plaintiffs' complaint and marked "Exhibit A" was executed by these defendants, other

then by signing the same, and by performing, at all times since each and every condition on their part to be performed and fulfilled.

Deny that plaintiffs paid to these defendants the sum of \$5000.00, or any sum at all, in consideration for the signing of said contract, but alleges that the said sum of \$5000.00 was paid to these defendants, and to other persons in compensation for actual damage done to them by the wrongful flooding of their lands by plaintiffs prior to the signing of said contract by these defendants.

Deny that at the time these defendants signed said contract there was any schedule of lands subjoined or attached to, or made a part of, said contract.

Deny that plaintiffs have in all things, or at all, fully performed all the stipulations and conditions of said contract on their part to be performed and fulfilled, but alleges that plaintiffs have, for the four years last past, wilfully, secretly and with an increasing disregard of the right of these defendants, violated the terms and conditions of said contract, by raising and maintaining a stage of water in said Utah Lake greatly in excess of that stipulated in said contract, and against the rights of these defendants, and to their annoyance, detriment and great damage.

Alleges that plaintiffs did in the year 1891, wrongfully and against the rights of these defendants and contrary to the terms of said contract construct, build and have since maintained a second dam in Jordan River, above the dam mentioned and described in said contract; that said second dam is and always has been, since its

construction, an obstruction to the natural flow of said Jordan River and a great damage to these defendants.

3. Deny that any mark on any bridge over Jordan River was the point established and recognized as low water mark in said Utah Lake; or that any one particular point was referred to in said contract as low water mark in said lake.

Allege that the points referred to in said contract are the following, to-wit: a point or mark near the mouth of Probe River established and perpetuated by Peter Madison, commonly known as the "Madison Mark," and a mark, or marks, near the mouth of Spanish Fork River established and perpetuated by James Aithen, commonly known as the "Aithen's Mark," and that the aforesaid two points are the points, and the only points, referred to in said contract as "The points heretofore established and recognized as low water mark in said lake".

4. Admit that these defendants dispute, and heretofore have disputed, that the mark described in plaintiffs' complaint as a mark on the bridge over Jordan River, commonly called Lahi Bridge, is the low water mark referred to in said contract.

Deny that the fact that these defendants have so disputed has only lately come to the knowledge of plaintiffs.

Deny that defendants, or either of them, have interfered, or have threatened to interfere, wrongfully, forcibly or at all, with plaintiffs' dams, or their management of the same.

Admit that defendants claim that plaintiffs are not entitled to maintain said dams, or the stage of water in Utah Lake, to the

height claimed by plaintiffs, but only to the height specified in the aforesaid contract, to-wit: "an elevation or height not to exceed three feet and three and one-half inches above the points heretofore established and recognized as low water mark in said lake".

Admit that both these defendants have already brought actions against plaintiffs which are now pending either in this Court, or on appeal in the Supreme Court of the Territory of Utah. Said suits are brought on account of the wrongful acts of plaintiffs, and plaintiffs have no right to complain of the annoyance and expense occasioned by the defense of suits growing out of their willful violation of the conditions of said contract.

5. Allege that plaintiffs threatened and advertise to continue to raise the waters of Utah Lake, and to maintain a stage of water in said lake greatly in excess of that stipulated in said contract, and defendants fear that unless plaintiffs are restrained by the order and injunction of this Court that plaintiffs will continue to maintain a stage of water in said lake contrary to the terms and conditions of said contract to the great and irreparable damage of these defendants.

Wherefore defendants pray that plaintiffs take nothing by this action; that Madsen's Mark near the mouth of Provo River and Aitken's Mark near the mouth of Spanish Fork River be established and confirmed as the points referred to in said contract as "the points heretofore established and recognized as low water mark in said lake"; that the plaintiffs be enjoined from raising the waters of Utah Lake contrary to the stipulations and

conditions of the aforesaid contract; that an order issue out of this Court compelling plaintiffs to remove the dam in Jordan River, known as the new dam, constructed by them contrary to the terms of said contract; that defendants recover from plaintiffs their costs in this action; and that defendants may be granted such other and further relief as this Court may deem just and equitable.

Signed Ira W. Kennard

Signed Charles Bulkeley

Attorneys for defendants
Geo. T. Peay and Peter Hudson

George T. Peay, being first duly sworn, on his oath says that he is one of the defendants herein answering, that he has read the foregoing answer and knows the contents thereof, that the same is true of his own knowledge, except as to things and matters therein stated upon information and belief, and as to them he believes it to be true.

Signed George T. Peay

Subscribed and sworn to

before me, this 17th day of

October 1894.

SIGNED J.W. Beasley

SIGNED Clerk 1st. Jud. Dist. Court

SIGNED By Geo Haverkamp

Signed Dep. Clerk

SEAL

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT,
TERRITORY OF UTAH

- - - - -

Salt Lake City et al., Plaintiffs, }
vs. }
Joseph H. Colladge, Annie M. Peay, }
et al } Defendants

ANSWER

Comes now the defendant, Annie M. Peay, and appearing for herself alone, and for none other, and answering plaintiffs' complaint herein, alleges:

1-Denies that the meander line of Utah Lake as established in the Government survey is now, or at any time ever has been, the low water mark of said lake, natural, artificial, otherwise or at all.

Denies that through any agency, either by means of plaintiffs' dams, or otherwise, or at all, the stage of water in Utah Lake has been maintained or preserved so that the said meander line is, or ever has been, the low water mark of said lake, or substantially so.

Alleges that, at no time since the said meander line has been established, have the waters of said Utah Lake extended to the said meander line, except at irregular and unconnected times during the last past four years, and that, at and during each and all of said irregular and unconnected times, the waters of said lake has been raised and maintained by plaintiffs, or their agents, wrongfully, unlawfully and contrary to the rights and wishes of defendant, and by artificial means.

2,- Denies that she ever, or at all, executed the contract as set out in plaintiffs' complaint and marked "Exhibit A", or that she holds any lands subject to said contract, or that she, in any manner, or at all, is bound by the terms and conditions thereof.

3,- Defendant has no knowledge, information or belief sufficient to enable her to answer the following allegations of plaintiffs and therefore denies: that any of defendants executed said contract, or that any of the defendants claim under and through other parties to the contract who executed the same, or that said contract was executed at all by any person; that plaintiffs paid to defendants, or to any one, or at all, the sum of \$2000.00, or any sum at all, in consideration for said contract, or any consideration whatsoever; that at any time, or at all, there was subjoined or attached to said contract any schedule of any kind or character; that plaintiffs have fully, or in part, or at all, performed the stipulations and conditions of said contract on their part to be performed; that any mark on any bridge over Jordan River, or any mark or point at any place, ever indicated or marked low water mark in said Utah Lake, or low water as indicated in said contract.

4,- Denies that she has, in any manner, or at any time, interfered, or threatened to interfere, wrongfully, forcibly or at all, with plaintiffs' dams, or with their management of the same.

Wherefore defendant prays that plaintiffs take nothing by their complaint, and that defendant may go hence with her costs in this behalf expended.

Signed Ira W. Kenward

" Charles DeMoing

Attorneys for defendant
Annie M. Peay.

Annie M. Peay, being first duly sworn, on her oath says that she is the defendant herein answering, that she has heard read the foregoing answer and knows the contents thereof, that the same is true of her own knowledge, except as to matters and things therein stated upon information and belief, and as to them she believes it to be true.

Signed Annie M. Peay

Subscribed and sworn to before me

this 17 of October, 1894.

SEAL J.W. Donahy
Clerk 1st Jud. Dist. Court
By Geo. Haverkamp
D.E. Clerk

TERRITORY OF UTAH }
COUNTY OF UTAH }

ss.

IN THE DISTRICT COURT FOR THE
FIRST JUDICIAL DISTRICT.

Salt Lake City et al.,

Plaintiffs,

vs.

Joseph H. Collidge et al.,

Defendants.

DEEMED.

The defendants, George T. Peay and Annie H. Peay, answer to the plaintiffs' complaint herein, and for cause of demurrer, allege:

1. That the complaint does not state facts sufficient to constitute a cause of action.
2. That the said complaint is ambiguous, unintelligible and uncertain in that it appears that plaintiffs are seeking to establish in Utah Lake two low water marks of different elevation; and these defendants are unable to ascertain whether plaintiffs are relying upon a contract, upon a right by prescription, or upon a legal right.
3. That it appears upon the fact of said complaint that the Court has not jurisdiction of the subject of the action.
4. That there is a defect of parties plaintiff in the omission of Salt Lake County.
5. That there is a defect of parties defendant in the omission of the following named persons, viz: Wm. Clark, A.R. Anderson, Samuel Briggs, George Johnson, Aza Adams, Peter Adamson, J.S. Kelley, R.B. Preston, J. Proctor, Joseph Kirkwood, John Hendley, Thomas Vincent, Daniel Vincent, B.K. Bullock, Milan Packard, E.P. Whetmore

John Streater, O. Strong, M.R. Grandel, John A. Strong, R.L. Bird, James Allman, Daniel Y. Shepard, William Holmes, Warren Davis, Joseph Robinson, Bowen & Davis, William Matthews, Greer Banks & Bro., Henry C. Leetham, and Aaron Shepard; also in the omission of the following: Haver Ellis Estate, David Evans Estate, Estate of Writer or William H. Bromley, Estate of James Clark, Estate of Hans V. Christensen, Estate of L.E. Harrington, and Richard Stell Estate.

6. That there is a misjoinder of parties defendant namely; Annie M. Peay, Netherland Fine Stock Company, John Montgomery, John C. Cutler, Thomas R. Cutler, John Zimmerman, John R. Hardest, Ira D. Wines, Lois R. Harrington, Daniel Harrington, Theodore S. Harrington and more than one hundred others. There are not shown to be parties to the contract pleaded, and no notice of the contract is alleged.

Signed IRA W. EDWARD

Signed CHARLES DEMOST

Attorneys for defendants

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On September 5, 1894 Demurrer of defendant PETER MADSEN filed.

On January 3, 1895 " " " H.C. EDWARDS "

On February 1, 1895, Answer of defendants FIRST WARD PASTURE CO.
RODGER FARMER was filed.
attorneys for

On February 6, 1895, Notice was served on/defendants that on June 1, 1895, at the opening of court, plaintiffs will move the Court for an order discharging the Referees heretofore appointed and for judgment in favor of the plaintiffs against the defendants on the default taken as to a portion of the defendants and on the said consent order of February 6, 1895, as to the remainder of the defendants, according to the prayer of the complaint.

2033 - Complaint

caused the nature to said Wash Lake to raise four feet and five inches above its natural level, and wrongfully obstructed and stopped the natural flow and drainage of the waters from the said Wash Lake in and through the said Spring River, and has thereby caused the nature to be in that lake to back up on all that plaintiff's said land, and flood and overflow the same on the same, thereby doing all harm of any kind and nature arising therefrom, and has thereby subjected to the damage of the plaintiff in the sum of \$10,000.00, that all of said land by reason thereof has been raised and is now, being and about with water, which has, since said obstruction, and is hereby raised several feet higher to the surface of the water than the surface of the said Spring River, and that by reason of the nature thereof the plaintiff is not able to grow crops and raise stock and has been and is to be subjected to the loss of plaintiff's said property, thereby the defendant by said obstruction the raising of the said water level has been doing all of said harm and also by greatly interfering with all said plaintiff's business to health and well-being for intention to plaintiff's damage in the sum of \$10,000.00, being a total damage to plaintiff by reason of the wrongful acts of the defendant of \$10,000.00.

IX

That said defendants threaten to and will unless restrained by this Court continue to wrongfully maintain said dam across said Spring River, and thereby cause the water in said Wash Lake to back up and stand on plaintiff's said land as aforesaid.

WHEREFORE, plaintiff prays judgment against said defendants for the sum of \$10,000.00, and that said defendants be forever restrained from so obstructing the natural flow and drainage of said Wash Lake, and for such other and further relief in the premises as the Court may deem

POSTOFFICE AND TELEPHONE;
203 E. FIRST NORTH ST.

TELEPHONE No. 70

Salt Lake City, Utah, Feb. 11, 1905

J.N. Buckley
Utah Nat. Hist. Mus.

Dear Sir:

Yours of the 9th inst. informing me of my
appointment as a temporary agent of Salt Lake City at St. W. J. N.
College of St. W. J. N. together with A.D. Holdings of Fares and L.N.
Shortage of Space just received.

I will be in Fares D.V. Feb. 18th at 10 a.m. as desired;
to hear the testimony, which I hope can be forthcoming on that
date without fail as I am very busy indeed.

Very respectfully,

J.N. Taylor

IN THE FIRST JUDICIAL DISTRICT COURT, TERRITORY OF UTAH, COUNTY OF UTAH.

SALT LAKE CITY et al.,
Plaintiffs,

-vs-

JOHN E. ORLANDO et al.,
Defendants.

DECRETAION

It is hereby stipulated and agreed by and between the parties to this action that the elevation of three feet three and one-half inches above low water mark referred to in the contract of 1891, in evidence in this case, is at a point four feet and six inches below the top of the stone monument near the head of Provo River, which was established by the Utah Lake Commission in 1895, as testified in this case by Samuel Evans, Francis Armstrong, Elias A. Smith and others; and that the decree of the court shall fix said elevation as being the point referred to in said contract as "three feet three and one-half inches above the point hereinafter established and recognized as low water mark in said lake;" and for this purpose a survey shall be made and a permanent monument shall hereafter be established and maintained at the expense of the plaintiffs, in said Utah lake, at a point to be hereafter agreed upon by the parties hereto or fixed by the court, between a point one mile north of Provo River and a point five miles south of the mouth of said river, where it will be least subject to temporary fluctuations of the height of the water by winds or the influx of Spanish Fork and Provo Rivers, to perpetuate said agreed elevation; and that said monument when so established shall be maintained as the controlling evidence of the elevation at which the water of said lake is authorized to be maintained by said contract.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF NEW
MEXICO, TERRITORY, VERA CRUZ.

SALT LAKE CITY et al.,

Plaintiffs,

Vs.

JOHN H. GILLMAN et al.,

Defendants.

STIPULATION.

It is hereby stipulated by and between the plaintiffs and the defendants who have appeared:

That the referees appointed under the consent order, made in this action on the 6th day of February, 1895, forthwith made their final report to the Court, in substance that having heard the testimony offered by the parties on the subject of the liability of the plaintiffs for damages, and found from such evidence that said plaintiffs were liable, and having made progress in taking testimony as to the amount of damages suffered by said defendants, the whole amount thereof was agreed on by the parties at Six Thousand Dollars (\$6000.00), payable by the plaintiffs to the defendants jointly, to be by them divided among themselves.

On the filing of said report, an order of the Court confirming the same shall be made and entered; and said sum of Six Thousand Dollars, the damages so reported and confirmed, having been paid by said plaintiffs, they shall be entitled to the permanent injunction as prayed for in the complaint and provided for in said consent order, made as aforesaid on the 6th day of February, 1895, and decree accordingly shall be made and entered herein; "Provided that this stipulation shall not be so construed as to prevent the defendants

from bringing suits in case the plaintiffs shall in the future violate the compact or the provisions of the decree which shall hereafter be made and filed herein.*"

It is further stipulated and agreed that the complaint shall be deemed so amended as to contain the allegations that the plaintiffs heretofore, to-wit, in the years 1888, 1889, and 1890, removed bars and other obstructions which naturally existed in the bed of Jordan River at and near the site of the present upper dam erected by said plaintiffs in said River, and in such removal removed permanent natural obstructions then in said River, and permanently lowered the bed thereof Twenty-four (24) inches, thus increasing the capacity of said River and thereby enabling said plaintiffs to utilize Twenty-four (24) inches more in depth of the waters of said lake over the entire surface thereof, in seasons of low water. That said plaintiffs by reason of the removal of said bars and other obstructions to the depth aforesaid, afterwards erected said new dam, and have rightfully kept planks at the base thereof Twenty-two (22) inches high, said planks being a less or not more or greater obstruction to the flow of water in said River than were said bars and other obstructions before their removal as aforesaid. That until within two years last past the foregoing facts were not disputed by said defendants, and the said Twenty-two (22) inches of planks were maintained in said upper dam by common consent of said parties to said contract which is set out in said complaint and made a part thereof. That during the two years

"The above starred sentence was written on original copy."

that before the commencement of this action, said defendants have disputed the right of said plaintiffs to subjoin the said twenty-two (22) inches of planks in said upper dam.

It is also stipulated that the answer of said defendants shall be deemed as admitted as to contain a denial of each and every of said allegations, and any affirmative defense may be introduced under said denial except the last, so as to put the question at issue.

It is further stipulated that the plaintiffs' complaint shall be deemed as admitted as to contain the following allegations, to-wit:

1. That ever since the making of said contract, there has been in office and acting the Board of Five members, provided for in said contract, who have been commonly called commissioners.

2. That said Board have practically construed said contract ever since the making thereof as authorizing and requiring them to inform themselves as to the fall of snow each year and the probable quantity of water likely to flow into said Utah Lake, and, at any time, to give directions to the plaintiffs how high they were at liberty to raise the said dam in said Jordan River by putting planks therein, with a view to maintaining the water in said lake up to the highest level authorized by said contract, and the parties to said contract have acquiesced in said practical construction thereof, except as hereinafter stated.

3. That ever since the making of said contract, it has been practically construed by said board as authorizing said plaintiffs to follow the directions given by said Board, by putting in and retaining the planks in the dam for raising the water until other

directions were given by the Board, and the parties to said contract have at all times acquiesced in said construction and practice until within the last two years before the commencement of this action.

4. That said Board has practically construed said contract, once and every year since it was made, as authorizing the Plaintiffs on their own motion to put planks in said dam whenever the high water in said lake had reached to the highest, or compromise level, authorized by said contract, and to keep said planks in said dam until the said Board ordered them out, either wholly or in part, with a view to maintaining the water in said lake up to the compromise line, and that said Plaintiffs have put and maintained planks in said dam each and every year since the making of said contract, in accordance with said construction thereof. That said practice and construction of said contract are warranted by said contract and its true meaning, and have been acquiesced in by the parties thereto until within two years next prior to the commencement of this action. That during said period said defendants have objected thereto and now dispute the Plaintiffs rights to continue said practice.

And it is further stipulated that the answer of said defendants shall be deemed so amended as to contain a denial of each and every of said allegations and
/ any affirmative defense may be introduced under said denial, except the last, so as to put the same in issue,

It being further distinctly understood and agreed that the Plaintiffs shall pay the Referees' fees, the Reporters fees for services rendered before the Referees; and each party shall pay the expenses of its own witnesses.

Dated Sept. 7, 1895.

Signed ~~Evans and Rogers~~
Attorneys for Plaintiffs

Signed: Ira W. Kenward, Charles DeMeley, D.D. Houts and R. Anderson
Thurman and Wedgwood, Evans & Rogers, Saxe and Edwards- Atty's for Defendant.

IN THE SUPREME COURT OF THE STATE OF

UTAH

Regular May Term

Salt Lake City, et al.,

Appellants,

vs.

Joseph H. Gollidge, et al.,

Respondents.

This cause having been heretofore argued and submitted, and the court being sufficiently advised thereon, it is now here considered, ordered and adjudged that the judgment of the lower court be, and the same hereby is reversed as to the two points decided, and remanded with directions to the court below to correct and modify the finding of facts and decree as to those points, in accordance with this opinion.

Costs of Appellant,

Clerk's costs, -----\$3.50

IN THE SUPREME COURT OF THE STATE OF UTAH

Salt Lake City, et al.,

Appellants,

v.

Joseph H. Collage, et al.,

Respondents.

1. Finding of Facts. ----- Modification of

Where the finding of facts on a material issue is clearly in contravention of the preponderance of evidence, and is so manifestly erroneous as to amount to an oversight or inadvertence, on the part of the court, the facts so found and the decree entered thereon, may be modified by the Supreme Court, so as to conform to the weight of evidence.

2. Contract. ----- Construction of. -----

Where by contract a commission is to be appointed, and the members thereof are constituted the agents of both parties thereto, for the purpose of carrying out certain provisions of the contract, the appellate court in construing such provisions, will not adopt an interpretation which is neither warranted by the language in the contract, nor by the purpose and object for which the commission was created, and, where there is nothing to warrant the construction adopted by the trial court, the appellate court has power to modify such construction and to require a decree to be entered in conformity with such modification.

Bartch, J.

This controversy arose over certain dams which the plaintiffs erected and maintained, in the Jordan River near its source at Utah Lake, for the purpose of irrigation. The action was brought to establish the low water mark, in the lake, referred to in a certain contract, between the plaintiffs and defendants, made in 1885, to determine the plaintiffs' rights to maintain their dams, and to have the defendants restrained from interfering with them,

and from commencing or prosecuting any suits at law against the plaintiffs, on any claim that they had wrongfully raised the water in said lake, or flooded the defendants lands, or caused any injury or damage thereto by said means.

It appears that during the pendency of the suit, the parties thereto entered into stipulations, as to a number of the issues raised in the pleadings, and, respecting those issues, the finding of the court was entered in conformity with the stipulations, and the court was taken only from that portion of the issues which relate to the issues raised and decided by the court. But two questions are presented for our consideration.

By virtue of the contract, above referred to, the plaintiffs acquired the right to erect and permanently maintain a dam in the Jordan River, at a certain height specified, for the purpose of raising the water in the lake. The construction of the dam was to be such that, by placing plank or other obstruction into the water way, the water in the lake could be raised, or by removing them could be lowered. For the purpose of carrying the agreement into effect, provision was made for the appointment of a commission, who were constituted the agents of both parties to the contract, and, among other things, were empowered to determine and direct when and to what extent obstructions might be placed into the water way of the dam, not to exceed the highest elevation specified in the contract. It was also agreed that the plaintiffs should have the right to dredge the bottom of the river and cut through a certain bar in the lake, at the head of the river so as to permit a more rapid flow, and to secure to themselves a more reliable supply of

water by being enabled to draw it from a lower level in the lake, provided a dam were put at a suitable place in the river, or at the bay, the lake to be used and maintained as a reservoir.

Under this contract and the evidence the court found, among other things, that the plaintiffs had the right to maintain an obstruction in a certain dam, to the height of fourteen inches above the floor of the dam, and the first question to be determined is whether the court found in the decree at this point.

It appears that the first dam was constructed by John Lake County, under the authority of the State, between Salt Lake and Utah Counties to divert water from the river for the purpose of irrigation. All the plaintiffs became interested therein, and, afterwards, in pursuance of the contract, a bar in the river, known as the "Old Bar," was cut through and destroyed, the channel of the river enlarged, and a new dam built about a mile below the new bar, but above the old dam, for the purpose of holding the water in the lake at the same level, as it was before the new bar was removed, the removal of which was effected, and the dam built to enable the plaintiffs to draw the water, when necessary, from a lower level in the lake; and the height at which permanent obstruction, may be maintained by the plaintiffs in the new dam, without interference by the Commission, or any of the defendants, is the exact point now under consideration.

The appellants contend that the evidence does not justify the findings of facts on this question, or that portion of the decree entered thereon, which determines the elevation at which the plaintiffs have a right to maintain the new dam, and the number of

inches in depth of the new bar and other obstructions they had removed above the new dam, and permanently lowered the bed of the river. The finding in question is as follows:

"That the plaintiffs in the years 1888, 1889 and 1890 removed bars and other obstructions which naturally existed in the bed of the Jordan River at the new dam, and at the point known as 'New Bar,' in the neighborhood of one mile above the new dam, erected by said plaintiffs in said river, and in such removal removed permanent natural obstructions then in said river above said dam, and permanently lowered the bed thereof fourteen inches, thus increasing the capacity of said river and thereby enabling said plaintiffs to utilize fourteen inches more in depth of the water of said lake, over the entire surface thereof, in seasons of low water.

That said plaintiffs by removal of the removal of said bars and other obstructions, to the depth aforesaid, are entitled to at all times keep and maintain planks or other obstructions on the floor or sill of the new dam, erected by them, to the height of fourteen inches above the floor or sill of said dam and no more, and the court finds that said planks to the height of fourteen inches, above the floor of the new dam, are no more or greater obstruction to the flow of the water in said river, than were said bars and other natural obstructions before their removal, as aforesaid. The floor of said new dam is found to be six inches lower than the top of the sill of the old dam as fixed by said contract."

On the facts thus found, the court decreed that the "plaintiffs

are entitled to at all times keep and maintain planks or other obstructions on the floor or sill of the new dam created by them in the Texas River, to the height of fourteen inches", and no more. It is difficult to see by what process of reasoning such a conclusion was reached.

Counsel for the respondents here, in their brief, attempted an explanation of it, but, to say the least, their argument in the face of the record, and of the above finding is far from convincing, and is quite unsatisfactory to us. There is an express finding that the plaintiffs had actually lowered the new dam, to the depth of fourteen inches, and because thereof were entitled to "utilize fourteen inches more in depth of the waters of said lake, over the entire surface thereof, and that the top of the sill of the new dam is six inches lower than the top of the sill of the old dam which was fixed by contract. It appears from the evidence that the sill of the old dam is eighteen and a half inches lower than the new bar was before its removal, and the new dam being above, and six inches lower than the old, how can the plaintiffs utilize fourteen inches more of water over the entire surface of the lake, if they be limited to fourteen inches of obstructions on top of the sill of the new dam? That water seeks its level, is a self evident proposition, and thus the sill of the old dam, being six inches higher than that of the new, the effect is to neutralize six of the fourteen inches of obstructions which the decree permits to be placed on top of the sill of the new dam, which practically is to allow the plaintiffs but eight inches of obstructions. This is so manifestly erroneous as to amount to an

oversight or inadvertence, on the part of the court, in entering the decree, notwithstanding the views of counsel for the respondent, to the contrary. In conformity with the finding of facts, the court ought to have allowed twenty, instead of fourteen inches of obstruction to be placed on the top of the sill of the new dam. Such would be the inevitable result from the finding of facts quoted, but the appellants insist that they dredged the river and lowered the new bar more than fourteen inches; that the facts found respecting this point are not such as the evidence warranted, and that they are entitled to maintain in the new dam at least twenty-two inches of obstruction. Upon careful consideration of the whole evidence, we are bound to admit the correctness of this position.

The witness Lawrence who made the original survey of the river, for the purpose of settling the controversy between the interested parties, testified: "I can put an obstruction upon the floor of the new dam of 2.01 feet, before I will obstruct the river to any greater extent than the presence of the new bar did obstruct it. The difference in elevation between the floor of the new dam, and the top of the new bar is 2.12 feet, the top of the bar being the higher." According to further testimony of this witness, when the contract was made, "the difference between the present sill of the lower dam and the top of the outlet bar at the lake was 2 feet and 3 inches. *Making sill of Turner Dam 5.54' below camp-W.A.K.

The witness McAlister testified: "I superintended the work of dredging; was there frequently at the dam while it was being constructed, and three times ran a line of levels so as to make sure we were not getting it above the lower dam. The sill of the *Actual difference on New Concrete Dam 5.65 ft. *My figures W.A.K.

upper dam might be maintained two feet above its present elevation without retarding the flow of the water any more than the natural obstructions would have done, if they had remained in the river and in the bar at the mouth of the lake."

The witness Young said: "The channel is now practically $1 \frac{3}{4}$ feet deeper than appears from Mr. Dorman's notes."

Defendants witness Seavine testified that at the lowest point which he could find on the inlet bar "the twenty-two inches of boards would be about $\frac{1}{2}$ of an inch higher than the inlet bar."

These witnesses are experts of acknowledged skill and large experience as hydraulic engineers, and from their testimony, as well as from the other evidence in the record, it is difficult to see how twenty-two inches of obstructions can interfere with the natural level of the lake, as it existed before the dredging of the river and the building of the new dam, or at the time when the contract was entered into by the parties to this controversy. It is clear that the contention of the appellants, on this point, is sustained by such a preponderance of the evidence, as will justify us in directing the court below to correct the finding of facts and decree, so as to permit the plaintiffs to maintain permanently, without interference on the part of the commissioners, or the defendants, twenty-two inches of obstructions in the new dam; and if the practical operation of this should ever flow any of the lands of the defendants, as is predicted by their counsel, then such misfortune must be attributed to the want of evidence to show that fact.

The remaining material question in this case is, whether the Utah Lake Commissioners have authority, under the contract, to permit the appellants to place additional obstructions in the dam, between October

in any year, and March 15th following, if such obstructions have been ordered cut and removed after the first day of October.

The trial court decided this question in the negative, as appears from the clause of the decree which reads, as follows: "If the said commissioners order the removal of the planks or other obstructions after the first day of October in any year, the plaintiffs shall not have leave to replace the same until the fifteenth day of March of the following year, nor at that time, unless the commissioners shall so decide."

The applicants claim that this is the result of an erroneous construction of the contract, and is not in harmony with the intent of the parties to it, and that the intention of the parties in creating the commission was to give it all the power necessary to enable it to carry the contract into effect according to its true intent and meaning.

The commission was created "for the purpose of better carrying" the contract, into effect and the contract so far as material here provides, as follows: The said persons shall constitute a Board, and are hereby empowered, as the legally constituted agents of the parties hereto, to determine and direct when and to what extent obstructions may be placed in the said water way of the dam, for the purpose of storing the lake with water for future use, not to exceed the highest elevation hereinbefore specified. Provided, that if any year, on or after the 15th day of March, it shall be ascertained by said Board that the fall of snow during the past winter has been light, and if the said Board are of the opinion that the

water of Utah Lake will probably not rise to the highest level hereinbefore mentioned, then the said Board shall permit the said parties of the second part to raise said dam to a height to be fixed by said Board, which shall cause the water of said lake to rise to said level, and if it shall be ascertained by experience and observation that the said parties of the second part can obtain all the water necessary for navigation purposes by keeping the waterway of the dam open until the waters of Utah Lake shall have receded below the highest level mentioned, then the said Board shall require the water way to be kept open until the water recedes to such level as the Board shall deem sufficient to supply the said parties of the second part with water; and, provided further, that when at any time in each year, to be fixed by said Board, the high water of Utah Lake shall have receded to the highest elevation above herein specified, the parties of the second part shall have the right, without hindrance from any person or persons, to cause the waters of said Utah Lake to be held back by regulating said dam not to exceed the elevation above mentioned, and use the said water as they may desire until such date, on or after the first day of October, as said Board shall decide, at which date the said parties of the second part shall open the entire water way of said dam (excepting the uprights) down to the sill or base thereof, and permit the said waters to run free."

Under this provision of the contract, it is insisted by the respondents, that if the additional obstructions are ordered removed by the commission, after the 1st of October, in any year, they

cannot be replaced until after the 15th day of March next following. This would imply that if they were not ordered removed they might remain in the dam during the entire winter. We do not think such a construction is warranted by the language employed, nor by the purpose and object for which the commission was created. While the plaintiffs are not permitted to replace the obstructions, of their own motion, after they have been ordered out, still the commission may order them replaced at any time when the circumstances, and condition of the lake, warrant the obstructing of the flow of the water, so as to comply with the terms of the contract.

The purpose and duty of the commission is to watch the condition of the lake and guard the interests of both parties to the contract.

In the absence of express words to that effect, we do not feel warranted in adopting a construction which would empower the commission to permit the planks to remain in the dam from October 1st to March 15th, but prohibit them from replacing them before March 15th, if for any purpose they should order them to be removed after the 1st of October.

Now, after a careful consideration of the entire contract, are we able to ascertain any good reason why such a construction should be adopted. Now is there anything to indicate that such was the intention of the parties, at the time of making the contract.

We conclude that the appellants' contention, as to this point must also be sustained, and that the finding of facts and decree, in relation to this question, must be modified, so as to authorize the commission to replace additional obstructions in the water way

of the day before the 15th day of March, in any year, even if they were taken out after the 1st day of October.

We do not deem it necessary to discuss the other points raised in the record.

The cause is returned, as to the two points decided, and remanded with directions to the court below to correct and modify the finding of facts and decree, as to those points, in accordance with this opinion.

We Concur:

Signed JOHN C. J.

Signed HENRY J.

UNITED STATES OF AMERICA

STATE OF UTAH)
COUNTY OF KANE) ss.

I, LILBURN P. PALMER, Clerk of the Supreme Court of the State of Utah, do hereby certify that the foregoing is a full, true and correct copy of the order made and judgment rendered, together with a copy of the original petition of the State in the foregoing entitled action, now of record and on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said Supreme Court, this the 6th day of October, A.D. 1896.

Signed Lilburn P. Palmer
Clerk Supreme Court.
By H.W. Griffith
Deputy Clerk

SEAL

IN THE SUPREME COURT OF THE STATE OF UTAH.

Regular May Term.

Salt Lake City et al.,

Appellants,

v.

Joseph H. Collinge, et al.,

Respondents.

This cause having been heretofore argued and submitted, and the court being sufficiently advised thereon, it is now here considered, advised, and adjudged that the judgment of the lower court be, and the same is hereby reversed as to the two points decided, and remanded with directions to the court below to correct and modify the finding of facts and decree as to these points, in accordance with this opinion.

Costs of Appellant,

Clerk's costs, - - \$3.50

12/28/40

CONCLUSIONS OF LAW

Upon the foregoing facts the Court finds the law to be:

1st. That the plaintiffs have the right to maintain the waters of Utah Lake to an elevation four feet and six inches below the top of the stone monument, near the head of Jordan River, which was established by the Utah Lake Commission in 1885; and said elevation is the point referred to in said contract as "three feet three and one half (3 ft. 3½ in.) inches above the point heretofore established and recognized as low water mark in said lake."

2nd. That a survey shall be made and a permanent monument shall hereafter be established and maintained at the expense of the plaintiffs in said Utah Lake at a point to be hereafter agreed upon by the parties hereto or fixed by the Court, between a point one mile north of Provo River, and a point five miles south of the mouth of said river, where it will be least subject to temporary fluctuations of the height of the water by winds or the influx of Spanish Fork and Provo Rivers, to perpetuate said agreed elevation; and that said monument when so established shall be maintained as the controlling evidence of the elevation at which the water of the said lake is authorized to be maintained by the said plaintiffs under said contract.

3rd. That the plaintiffs are entitled to at all times keep and maintain planks or other obstructions on the floor or sill of the new dam erected by them in the Jordan River to the height of fourteen (14) inches above the floor or sill of the said dam, and no more.

4th. That when at any time in each year the high water of Utah Lake shall have recessed to the elevation fixed in the findings of "fact as four feet and six inches below the top of the said stone monument near the head of Jordan River, the same being" the point referred to in said contract as "three feet three and one-half inches (3 ft. 3½ in.) above the point heretofore established and recognized as low water mark in said lake", the plaintiffs have the right without hindrance from any persons or persons, to keep and maintain planks or other obstructions in either or both of their said dams in Jordan River, to cause the waters of Utah Lake to be held back by regulating said dams to a height not to exceed the elevation heretofore designated, and keep said planks or other obstructions in said dams until the same are ordered out by the commissioners referred to in said contract; but said commissioners have no right to order the plaintiffs to remove said planks or other obstructions prior to the first day of October in each year, and if the said commissioners order the removal of said planks or other obstructions after the first day of October in any year, the plaintiffs shall not have leave to replace the same until the fifteenth day of March of the following year, nor at that time unless the commission shall so decide; but whenever the water of Utah Lake recesses down to the elevation before designated, the plaintiffs shall have the right to place said obstructions in the river at the dams, without the permission of said commissioner. But when, at any time on or after the first day of October in any year, the said commissioners shall have ordered the plaintiffs to remove said planks or obstructions in said

"The above starred was written in long hand on original copy."

dams the said plaintiffs shall remove the same and the waters of the said river shall be permitted to run free and unobstructed from such obstructions until on or after the fifteenth day of March in the following year and until the commission shall decide that obstructions may be placed in said dams, or until the said waters shall have receded to the elevation hereinbefore designated. The planks and obstructions mentioned herein do not refer to the fourteen inches of planks that the plaintiffs are authorized to keep and maintain upon the floor or sill of the new dam at all times, as found in the findings of fact herein, but are in addition thereto.

5th. That the plaintiffs are entitled to an injunction perpetually enjoining and restraining each and all of the defendants to this suit, except George T. Peay, from bringing, maintaining or prosecuting any suit for any damages heretofore sustained by them or any of them by reason of any acts of the plaintiffs or any of them in placing obstructions in the Jordan River at the new dam or elsewhere, or in any way causing the waters of Utah Lake to overflow or otherwise injure the lands or other property of the said defendants or any of them, except George T. Peay, or by causing any damage to the defendants or any of them in any way whatever; Provided, that this conclusion shall not be so construed as to prevent the defendants or either of them from bringing any suits against the plaintiffs or either of them for any future violation of the terms of the contract, or of the decree herein.

6th. That each party shall pay their own witness fees, and the balance of the costs shall be apportioned as follows: "the plaintiffs shall pay one half (1/2) of all other costs, including costs of serving process on the defendants, clerks costs and reporters fees, and the defendants shall pay the other half (1/2) of said costs."

Dated January 3, 1896.

Signed William H. King
Judge.

IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT
UTAH TERRITORY.

Salt Lake City, et al., Plaintiffs,	}	
vs.	}	DECISION OF THE COURT
Joseph H. Collidge, et al., Defendants.	}	

*****and now on this the 3rd day of
January 1896, the Court having heard and examined the evidence in-
troduced, heard the arguments of Counsel, and being fully advised
in the premises doth find the following

FACTS

1. That the plaintiff Salt Lake City, is, and at all the times mentioned in the plaintiffs complaint was a municipal corporation created and existing under the laws of Utah Territory and that each and all of the other plaintiffs are, and at all the times mentioned herein were Corporations, duly organized and existing under the laws of said Territory.

2. That in the year 1880 the said plaintiff, Salt Lake City, at a cost of about two hundred and fifty/^{thousand}(\$250,000) dollars, constructed an irrigating canal from the Jordan River, at a point near the boundary line between Salt Lake County and Utah County, in Utah Territory, to the City of Salt Lake, a distance of about thirty miles. That the said canal is, and was at the time of its completion in 1882, eighteen feet wide at the bottom and three feet deep, and that it was and is of sufficient capacity to convey enough of the waters of the Jordan River to said Salt Lake City

to irrigate seven thousand acres of land. That during the Month of May, 1882, the said plaintiff, Salt Lake City, appropriated and diverted from said Jordan River, by means of said canal, enough water to fill the same, and that the water so diverted was, during the irrigating season of 1882, and during the irrigating season of each and every year since, has been used by the said plaintiff, Salt Lake City, and its inhabitants and grantees, for the irrigation of lands in Salt Lake County for the purpose of growing crops of hay, grain and vegetables thereon, and for domestic use. That the water so diverted and appropriated was then, and now is necessary for domestic purposes and for the irrigation of said lands, and that the same would be comparatively valueless without said water.

3rd. That in the year 1872 the plaintiff, The Utah and Salt Lake Canal Company, at a cost of about two hundred and twenty thousand (\$220,000) dollars, constructed and irrigating canal from the Jordan River, at a point near the boundary line between Salt Lake County and Utah County, in Utah Territory, to Pleasant Green Precinct, in said Salt Lake County, a distance of about thirty-one miles. That the said canal is, and was at the time of its completion in 1882, twenty feet wide at the bottom and four feet deep, and that it was and is of sufficient capacity to convey enough of the waters of the Jordan River to irrigate ten thousand acres of land. That during the month of June, 1882, the said plaintiff, The Utah and Salt Lake Canal Company, appropriated and diverted from said Jordan River, by means of said canal, enough water to fill the same, and that the water so diverted was, during the irrigating season of 1882, and during the irrigating season of

each and every year since, has been used by the said plaintiff, The Utah and Salt Lake Canal Company, and its stockholders and grantees, for the irrigation of land in Salt Lake County, for the purpose of growing crops of hay, grain and vegetables thereon, and for domestic use. That the water so diverted and appropriated was then, and now is, necessary for domestic purposes and for the irrigation of said lands, and that the same would be comparatively valueless without said water.

4th. That in the year 1872, the plaintiff, The South Jordan Canal Company, at a cost of about one hundred and ten thousand (\$110,000) dollars, constructed an irrigating canal from the Jordan River, at a point near the boundary line between Salt Lake County and Utah County, in Utah Territory, to Hunter Precinct, in Salt Lake County, a distance of about twenty miles. That the said canal is, and was at the time of its completion in 1875, fourteen feet wide at the bottom and three and a half feet deep, and that it was and is of sufficient capacity to convey enough of the water of the Jordan River to irrigate six thousand acres of land. That during the month of May, 1875, the said plaintiff, The South Jordan Canal Company, appropriated and diverted from said Jordan River, by means of said canal, enough water to fill the same, and that the water so diverted was, during the irrigating season of 1875 and during the irrigating season of each and every year since, has been used by said plaintiff, The South Jordan Canal Company, and its stockholders and grantees, for the irrigation of lands in

Salt Lake County for the purpose of growing crops of hay, grain and vegetables thereon, and for domestic use. That the water so appropriated and diverted was then and now is necessary for domestic purposes and for the irrigation of said lands, and that the same would be comparatively valueless without said water.

5th. That in the year 1878, the plaintiff, The North Jordan Canal Company, at a cost of about eighty thousand (\$80,000) dollars, constructed an irrigating canal from the Jordan River, at a point near the boundary line between Salt Lake County and Utah County, in Utah Territory, to Brighton Precinct, in said Salt Lake County, a distance of about twenty miles. That the said canal is and was at the time of its completion in 1881, fourteen feet wide at the bottom and three feet deep, and that it was and is of sufficient capacity to convey enough of the waters of the Jordan River, to irrigate six thousand acres of land. That during the month of May, 1881, the said plaintiff, The North Jordan Canal Company, appropriated and diverted from said Jordan River, by means of a canal, enough water to fill the same, and that the water so diverted was, during the irrigating season of 1881, and during the irrigating season of each and every year since, has been used by the said plaintiff, The North Jordan Canal Company, and its stockholders and grantees, for the irrigation of lands in Salt Lake County, for the purpose of growing crops of hay, grain and vegetables thereon, and for domestic use. That the water so appropriated

and diverted was then, and now is necessary for domestic use and for the irrigation of said lands, and that the same would be comparatively valueless without said water.

6th. That in the year 1877 the plaintiff, The Draper or East Jordan Canal Company, at a cost of about one hundred and forty-five thousand (\$145,000) dollars, constructed an irrigating canal from the Jordan River, at a point near the boundary line between Salt Lake County and Utah County, in Utah Territory, to Little Cottonwood Creek, Union Precinct, in said Salt Lake County, a distance of about twenty miles. That the said canal is, and was at the time of its completion in 1883, fifteen feet wide at the bottom and five feet deep, and that it was and is of sufficient capacity to convey enough of the waters of the Jordan River to irrigate eight thousand acres of land. That during the month of May 1883, the said plaintiff, The Draper or East Jordan Canal Company, appropriated and diverted from said Jordan River, by means of said canal, enough water to fill the same, and that the water so diverted was, during the irrigating season of 1883, and during the irrigating season of each and every year since, has been used by the said plaintiff, The Draper or East Jordan Canal Company, and its stockholders and grantees, for the irrigation of lands in Salt Lake County, for the purpose of growing crops of hay, grain and vegetables thereon, and for domestic use. That the waters so appropriated and diverted were then, and now are necessary for

domestic purposes and for the irrigation of said lands, and that the same would be comparatively valueless without said water.

7th. That in the year 1872 Salt Lake County constructed a dam in Jordan River, near the boundary line between Salt Lake County and Utah County, for the purpose of diverting the waters of said Jordan River from their natural channel and causing the same to flow through the said several canals of the plaintiffs for the uses and purposes aforesaid, and that in 1884 the said Salt Lake County transferred five-sixths undivided interest in said dam to the plaintiffs, who have ever since maintained the same for said purpose, and that its maintenance during all of said time has been and now is necessary to enable the plaintiffs to divert and use the said waters from the Jordan River so appropriated as aforesaid.

8th. That Utah Lake is a body of fresh water about thirty miles in length north and south, by fifteen miles in width east and west, situate between the Wasatch range of mountains on the east and the Oquirrh range on the west. It is in a basin between said ranges of mountains, and received the waters which flow therefrom. From the Wasatch range of mountains there is more copious drainage. The waters from the Wasatch range find their way to said lake through several water courses, among which are Provo and Spanish Fork Rivers. The only outlet from said lake is through said Jordan River. The cities of Provo, Springville and Spanish Fork are situate between said Utah Lake and the Wasatch Mountains, and between said

lake and said last named mountains is a large tract of arable and pasture land; all, or nearly all, of the same annually needs irrigation to render it productive, and said cities also depend on said streams for water supply. North of said lake for fifty miles or more, to the width on both sides of said Jordan River, of twenty miles on an average, the country consists of fertile lands largely occupied by cities and by cultivation of the soil. There are mountain streams running from the said Wasatch range of mountains to said Jordan River, but none from the west. All of said country needs the water of said lake for irrigation, and depends and has immovably depended altogether thereon by means of plaintiffs' said canals or in addition to the partial supply by the other said streams. During the thirty years last past the population east and north of said lake has been constantly increasing. The settlers east of said lake during said period have diverted a portion of the waters of Provo and Spanish Fork Rivers for irrigation and other purposes, and this diversion has increased from year to year according to the advance of population and land improvement, and to maintain the water supply in said lake, dams have been maintained by said plaintiffs in said Jordan River,

9th. To confirm and regulate the rights of those interested in said water, on or about the --day of January, 1883, the land owners on the east side of said lake, of one part, and said plaintiffs for their own interests and to subserve the interests of the large population north of said lake, and having a right to and needing the waters of said lake, entered into the following contract in writing

THIS INSTRUMENT, made thisday of January, in the year of our Lord one thousand, eight hundred and eighty-five, between Joseph H. Colledge, et al, all of Utah County, Territory of Utah, the parties of the first part, and Salt Lake County, Salt Lake City, the Utah and Salt Lake Canal Company, The South Jordan Canal Company, The North Jordan Canal Company, and the East Jordan Irrigation Company, all corporations in Salt Lake County, in said Territory, the parties of the second part, ~~WITNESSETH~~: That the said parties of the first part and each of them, for and in consideration of the covenants and agreements hereinafter contained, and the sum of eight thousand dollars to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed and confirmed unto the said parties of the second part, and to their and each of their successors and assigns forever, the right to maintain the dam in the Jordan River, known as the "Jordan Dam," situated at or near the boundary line between Salt Lake and Utah Counties, as at present constructed, an opening or water way through said dam, to be left at all times free and open, except as hereinafter specified, for the passage of water, as follows, to-wit: The width of said opening to be as at present established, including supports and uprights, the whole width, including such supports, being seventy-two feet more or less, the bottom of such opening or water way in said dam to be six inches above or higher than the bottom of the opening or water way in said dam as at present constructed, when free from boards or temporary obstructions. Also the right, free from interference or liability for damage, to flow the lands of the said

parties of the first part or either of them, to the extent which the dam as above described may cause the same to be flowed by the waters of the said Jordan River, Utah Lake, or otherwise. Also the right, in addition to the foregoing, free from liability for damage, to flow the lands of the said parties of the first part, or either of them, to the extent which may be caused by placing obstructions in the water way in said dam hereinafore mentioned, according to the limitations hereinafter specified, for the purpose of holding back or maintaining the waters in Utah Lake at an elevation or height not to exceed three feet and three and one-half inches above the points hereinafore established and recognized as low water mark in said lake, when the waters in said lake would otherwise naturally fall below such height or elevation that the water so held back might be used for use by the said parties of the second part when needed. The lands as adversely owned by the said parties of the first part hereinafore mentioned, and which may be affected by these grants are situated in Utah County, adjacent or near the Utah Lake, in the Territory of Utah, and are more particularly described in "Exhibit A," hereto annexed and made a part of this indenture.

To have and to hold the said granted rights, easements and servitudes, together with all the rights and privileges in anywise pertaining thereto unto the said parties of the second part, and to their and each of their successors and assigns forever.

For the purpose of better carrying the foregoing into effect, it is hereby mutually agreed by and between the parties hereto, that

on or before the first day of January in each year the parties hereto shall each respectively appoint two persons, and the four persons thus appointed shall meet together on or before the first day of February in each year and select an umpire, a disinterested person, who must not be a resident of either Salt Lake or Utah Counties, and each of said persons before entering upon the duties herein specified, shall enter into bonds in the sum of two thousand dollars for the faithful performance thereof, to the satisfaction or acceptance of the Probate Judge of either Salt Lake or Utah Counties. The persons so appointed shall continue to act until others are appointed and qualified to succeed them.

The said persons shall constitute a Board, and are hereby empowered, as the legally constituted agents of the parties hereto, to determine and direct when and to what extent obstructions may be placed in the said water way of the dam, for the purpose of storing the lake with water for future use, not to exceed the highest elevation hereinbefore specified; Provided, That if in any year on or after the 15th day of March, it shall be ascertained by said Board that the fall of snow during the past winter has been light, and if the said Board are of the opinion that the water of Utah Lake will probably not rise during the current season to the highest level hereinbefore mentioned, then the said Board shall permit the said parties of the second part to raise said dam to a height to be fixed by said Board, which will cause the water of said lake to rise to said level, and if it shall be ascertained by experience

and observation that the said parties of the second part can obtain all the water necessary for irrigation purposes by keeping the water way of the dam open until the waters of Utah Lake shall have receded below the highest level mentioned, then the said Board shall require the water way to be kept open until the water recedes to such level as the Board shall deem sufficient to supply the said parties of the second part with water; and, Provided, further, That when at any time in each year, to be fixed by said Board, the high water of Utah Lake shall have receded to the highest elevation above herein specified, the parties of the second part shall have the right, without hindrance from any person or persons, to cause the waters of said Utah Lake to be held back by regulating said dam not to exceed the elevation above mentioned, and to use the said water as they may desire until such date, on or after the first day of October, as the said Board shall decide, at which date the said parties of the second part shall open the entire water way of said dam (excepting the uprights) down to the sill or base thereof, and permit the said waters to run free.

That the members of the said Board shall each receive compensation at the rate of four dollars per day, with actual traveling expenses, which the parties of the second part hereby agree to pay.

It is further agreed that the said parties of the second part shall have the privilege of cutting through the bar in the lake at the head of the said Jordan River, and of lowering the same to such a depth as by an accurate survey shall be considered proper, so as to permit a more rapid flow of water and to secure to themselves

a more reliable supply of water by being enabled to draw it from a lower level in the lake than is at present possible, provided a gate or dam is put in at a suitable place in the river, or at the bar, and thus be able to make and maintain a reservoir in the interest of the parties of the second part that shall be permitted; also to have a right to use Utah Lake as a reservoir, with full right to maintain their dam as at present constructed and subject to the foregoing regulations.

It is further witnessed, the parties of the first part have hereto set their hands and seal, and the said parties of the second part have each caused its corporate name and seal to be subscribed and affixed the day and year first above written.

10. That said plaintiffs paid the consideration of Eight Thousand Dollars to the other parties to said contract; that a part of said defendants executed said agreement and all the others of said defendants claim under and through other parties to said contract who executed the same, and hold lands subject thereto.

11. And by consent of all the parties to this action the Court further finds that the elevation of three feet three and one-half inches above low water mark referred to in the foregoing contract, is at a point four feet and six inches below the top of the stone monument near the head of Jordan River, which was established by the Utah Lake Commission in 1893, as testified in this case by Israel Evans, Francis Armstrong, Elias A. Smith and others, and the said elevation is by consent of the parties hereto hereby fixed

as being the point referred to in said contract "as three feet three and one-half inches above the point heretofore established and recognized as low water mark in said lake"; and by consent of the parties hereto a survey shall be made and a permanent monument shall hereafter be established and maintained at the expense of the plaintiffs in said Utah Lake, at a point to be hereafter agreed upon by the parties hereto or fixed by the Court, between a point one mile north of Provo River and a point five miles south of the mouth of said river, where it will be least subject to temporary fluctuations of the height of the water by winds, or the influx of Spanish Fork and Provo Rivers, to perpetuate said agreed elevation, and that said monument when so established shall be maintained as the controlling evidence of the elevation at which the water of said lake is authorized to be maintained by said contract.

12. That the plaintiffs, in the years 1888, 1889, and 1890 removed bars and other obstructions which naturally existed in the bed of the Jordan River at the new dam and at the point known as "New Bar", in the neighborhood of one mile above the new dam created by said plaintiffs in said river, and in such removal removed permanent natural obstructions then in said river above said dam, and permanently lowered the bed thereof fourteen inches, thus increasing the capacity of said river and thereby enabling said plaintiff to utilize fourteen inches more in depth of the waters of said lake, over the entire surface thereof, in seasons of low water. That said plaintiffs by reason of the removal of said bars

and other obstructions to the right of navigation, are submitted to at all times keep and maintain planks or other obstructions to the flow or fall of the new dam erected by them to the height of fourteen inches above the floor or sill, or will do so at once, and the court finds that said planks to the height of fourteen inches above the floor of the new dam are so near or nearer downstream to the floor of the river as said river that said planks are not a substantial obstruction to the flow of water, and the court is of the opinion that said planks to be so located as to be at least lower than the top of the sill of the old dam as shown by said document."

13. That the plaintiffs have constructed planks to the height of twenty-four inches and more above the floor of the new dam, by means of which the defendants' upstream and downstream losses, except George T. Fay, sustained damages to the extent of the upstream losses, which have been fully paid by the plaintiffs to the said defendants as upstream losses, except said George T. Fay, which have been paid by the plaintiffs and accepted by said defendants except George T. Fay as full compensation for all damages heretofore sustained by the said defendants, except George T. Fay, by reason of any and all obstructions placed by the said plaintiffs in the said Jordan River at said dam or elsewhere.

14. That when at any time in each year the high water of Utah Lake shall have receded to the elevation hereinbefore fixed at

"The above starred sentence was written in long hand on original copy."

The above starred sentence was written in long hand on original copy.
W.A.K.

and maintain plank or other obstructions in either or both of their said dams in French Fork, so that the waters of that lake be held back by said dam to a height not to exceed the elevation immediately adjacent, and keep said plank or other obstructions in said lake until the same are ordered out by the commissioners appointed in said contract; but said commissioners shall be able to order the plaintiffs to remove said plank or other obstructions prior to the first day of October in each year, and if the said commissioners order the removal of said plank or other obstructions after the first day of October in any year, the plaintiffs shall not have leave to replace the same until the fifteenth day of March of the following year; and if that time expires the commissioners shall so decide; but whenever the water of that lake reaches down to the elevation before designated, the plaintiffs shall have the right to place said obstructions in the river at the dam, without the permission of said commissioners. But when, at any time in or after the first day of October in any year, the said commissioners shall have ordered the plaintiffs to remove said plank or obstructions in said dam the said plaintiffs shall remove the same and the waters of the said river shall be permitted to run free and unobstructed from said obstructions until on or after the fifteenth day of March in the following year and until the commission shall decide that obstructions may be placed in said dam, or until the said waters

shall have receded to the elevation hereinafore designated. The piling and obstructions mentioned herein do not refer to the four-foot banks of piling that the plaintiffs are authorized to keep and maintain upon the floor or sill of the new dam at all times, as found in the findings of fact herein, but are in addition thereto.

5th. That the plaintiffs are entitled to an injunction perpetually restraining and prohibiting each and all of the defendants to this suit, except George E. King, from interfering, maintaining or removing any piling for any purpose whatsoever sustained by them or any of them by means of any acts of the plaintiffs or any of them in placing obstructions in the Jordan River at the new dam or elsewhere, or in any way causing the waters of said lake to overflow or otherwise injure the lands or other property of the said defendants or any of them, except George E. King, or by causing any damage to the defendants or any of them in any way whatever; provided, that this conclusion shall not be so construed as to prevent the defendants or either of them from bringing any suits against the plaintiffs or either of them for any future violation of the terms of the contract, or of the decree herein.

6th. That each party shall pay their own witness fees, and the balance of the costs shall be apportioned as follows: the plaintiffs shall pay one half ($\frac{1}{2}$) of all other costs, including costs of serving summons on the defendants, clerk's costs and reporters fees, and the defendants shall pay the other half ($\frac{1}{2}$) of said costs.

Dated January 3, 1876

Signed William E. King
Judge

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ORDER.

The Court having found and filed herein the foregoing decision and findings of fact and conclusions of law thereon,

It is therefore ordered, adjudged and decreed, that the plaintiffs have the right to maintain the waters of Utah Lake at an elevation four feet six inches (4 ft. 6 in.) below the top of the stone monument near the head of Jordan River which was established by the Utah Lake Commission in 1909, said elevation being the point referred to in the contract set out in the findings of fact herein as "three feet three and one-half inches (3 ft. 3½ in.) above the point heretofore established and recognized as low water mark in said lake".

It is further ordered, adjudged and decreed that a survey shall be made and a permanent monument shall hereafter be established and maintained at the expense of the plaintiffs in said Utah Lake at a point to be hereafter agreed upon by the parties hereto or fixed by the Court, between a point one mile north of Provo River and a point five miles south of the mouth of said river, where it will be least subject to temporary fluctuations of the height of the water by winds or the influx of Spanish Fork and Provo Rivers, to perpetuate said agreed elevation, and that said monument when so established, shall be maintained as the controlling evidence of the elevation at which the water of said lake is authorized to be maintained by the plaintiffs under said contract.

It is further ordered, adjudged and decreed, that the plaintiffs are entitled to at all times keep and maintain planks or other obstructions on the floor or sill of the new dam erected by them in the Jordan River, to the height of fourteen (14) inches above the

flow or sill of the new dam, and no more.

It is further ordered, adjudged and decreed, that when at any time in each year the high water of Utah Lake shall have receded to an elevation four feet and six inches (4 ft. 6 in.) below the top of the stone monument near the head of Jordan River which was established by the Utah Lake Commission in 1895, and said elevation being the point referred to in the said contract, as "three feet three and one half inches (3 ft. 3½ in.) above the point heretofore established and recognized as low water mark in said lake", the plaintiffs have the right, without hindrance from any person or persons, to keep and maintain planks or other obstructions in either or both of their dams in Jordan River and cause the waters of Utah Lake to be held back by regulating said dams to a height not to exceed the elevation heretofore designated, and to keep said planks or other obstructions in said dams until the same are ordered out by said Commissioners, but said commissioners have no right to order the plaintiffs to remove said planks or other obstructions prior to the first day of October in each year, and if the said commissioners order the removal of said planks or other obstructions after the first day of October in any year, the plaintiffs shall not have leave to replace the same until the fifteenth day of March of the following year, nor at that time unless the commission shall so decide, but when the water of Utah Lake recedes down to the elevation before designated, the plaintiffs shall have the right to place said obstructions in the river at the dams without the permission of said commissioners. But when at any time, on or after the first day of October, in any year, the said commissioners shall have ordered the plaintiffs to remove said planks or

obstructions from said dam, the said plaintiffs shall remove the same, and the waters of said river shall be permitted to run free and unobstructed from such obstructions until on or after the fifteenth day of March, of the following year, and until the said commission shall decide that obstructions may be placed in said dam, or until the said waters shall have reached to the elevation immediately adjacent. The plaintiffs and defendants covenanted herein to not suffer to the fourteen inches of plank that the plaintiffs are authorized to keep and maintain upon the floor or sill of the new dam at all times, but are in addition thereto.

It is further ordered, adjudged and decreed that the said defendants and each of them, except George T. Peay, be and they hereby are perpetually enjoined and restrained from bringing, maintaining or prosecuting any suit for any damage whatsoever sustained by them or any of them, by reason of any acts of the plaintiffs or any of them in placing obstructions in the Jordan River at the new dam or elsewhere, or in any way causing the waters of Utah Lake to overflow or otherwise injure the lands or other property of said defendants or any of them, except said George T. Peay, or by causing any damage to the defendants or any of them, except said George T. Peay, in any way whatever; but this decree shall not in any way prevent the defendants or any of them from bringing any suits against the plaintiffs or any of them for any future violation of the terms of the said contract or of this decree.

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It is further ordered and adjudged that the parties plaintiff and defendant shall each pay their own witness fees, and the balance of the costs shall be apportioned as follows, to-wit: "the plaintiffs shall pay one half (½) of all other costs including costs of serving summons on the defendants, clerks costs and Reporter's fees, said one half of said costs being taxed at One Hundred and Fifty One dollars, and the defendants shall pay the other half of said costs taxed at One Hundred and Fifty and 25/100 dollars."

Dated January 3, 1976.

Signed William E. King

Judge

Revised Judgment Record

No. 3 pages 175 to 176 inclusive

"The above clerical was written in long hand on original copy."
E.A.E.

IN THE DISTRICT COURT IN AND FOR THE FIRST JUDICIAL DISTRICT
OF UTAH TERRITORY, COUNTY OF UTAH

Salt Lake City, et al.,
Plaintiffs,

vs.

Joseph H. Collinge, et al.,
Defendants.

NOTICE OF APPEAL

To the Defendants above named, and to their Attorneys, Evans & Rogers, Sney & Edwards, Ira H. Haggart, Charles Delaney, D.D. Harts, Robert Anderson, and Thurman & Wedgwood:

You are notified that the plaintiffs in the above entitled action appeal to the Supreme Court of the State of Utah from those certain portions of the judgment and decree made and entered therein, on the 2nd day of January, 1896, which are in the words and figures following, to-wit:

"It is further ordered, adjudged and decreed, that the plaintiffs are entitled to at all times keep and maintain planks or other obstructions on the floor or sill of the new dam erected by them in the Jordan River, to the height of fourteen (14) inches above the floor or sill of the new dam, and no more. x x x x

"If the said Commissioners order the removal of said planks or other obstructions after the first day of October in any year, the plaintiffs shall not have leave to replace the same until the fifteenth day of March of the following year, nor at that time unless the commission shall so decide, ~~xxxxxx~~ but then at any time, on or after the first day of October, in any year, the said commissioners shall have ordered the plaintiffs to remove said planks or obstructions from said dam, the said plaintiffs shall remove the same, and the waters of said river shall be permitted to run free and unobstructed from such obstructions until on or after the fifteenth day of March, of the following year, and until the said commission shall decide that obstructions may be placed in said dam or until the said waters shall have receded to the elevation heretofore designated."

Signed RICHARDS AND RICHARDS

Attorneys for Plaintiffs.

We hereby acknowledge service upon us of the foregoing notice of appeal and a copy thereof, this 29 day of February, 1896.

EVANS AND ROGERS
SAXBY AND EDWARDS
THURMAN AND WEDGEWOOD
DEMOISEY AND KENNARD

By H.C. EDWARDS
Attorneys for defendants.

Findings of Fact And Conclusions of Law by Judge Wm. H. King with 12 and 14 as amended by Judge A. C. Hatch in accordance with order of Supreme Court dated July 1, 1896.

This cause came on for trial before the Court on the 5th day of February 1895, the Plaintiffs appearing by *****and the Defendants ***** , and evidence having been introduced at intervals from time to time the cause was finally submitted to the Court, on the 16th, day of December, 1895, and now on this the 3rd day of January 1896, the Court having heard and examined the evidence introduced, heard the arguments of Counsel, and being fully advised in the premises doth find the following Facts:

1st. That the plaintiff Salt Lake City, is, and at all times mentioned in the plaintiffs complaint was a Municipal Corporation created and existing under the laws of Utah Territory and that each and all of the other plaintiffs are, and at all the times mentioned herein were Corporations, duly organized and existing under the laws of said Territory.

2nd. That in the year 1880 the said plaintiff, Salt Lake City, at a cost of about two hundred and fifty Thousand (\$250,000) dollars, constructed an irrigating canal from the Jordan River, at a point near the boundary line between Salt Lake County and Utah County, in Utah Territory, to the City of Salt Lake, a distance of about thirty miles. That the said canal is, and was at the time of its completion in 1882, eighteen feet wide at the bottom and three feet deep, and that it was and is of sufficient capacity to convey enough of the waters of the Jordan River to said Salt Lake City to irrigate seven thousand acres of land. That during the month of May, 1882, the said plaintiff, Salt Lake City, appropriated and diverted from said Jordan River, by means of said canal enough water to fill the same, and that the water so diverted was, during the irrigating season of 1882, and during the irrigating season of each and every year since, has been used by the said plaintiff, Salt Lake City, and

its inhabitants and grantees, for the irrigation of lands in Salt Lake County for the purpose of growing crops of hay, grain and vegetables thereon, and for domestic use. That the water so diverted and appropriated was then, and now is necessary for domestic purposes and for the irrigation of said lands, and that the same would be comparatively valueless without said water.

3rd. That in the year 1872 the plaintiff, The Utah and Salt Lake Canal Company, at a cost of about two hundred and twenty thousand (\$220,000) dollars, constructed an irrigating canal from the Jordan River, at a point near the boundary line between Salt Lake County and Utah County, in Utah Territory, to Pleasant Green Precinct, in said Salt Lake County, a distance of about thirty-one miles. That the said canal is, and was at the time of its completion in 1882, twenty feet wide at the bottom and four feet deep, and that it was and is of sufficient capacity to convey enough of the waters of the Jordan River to irrigate ten thousand acres of land. That during the month of June, 1882, the said plaintiff, the Utah and Salt Lake Canal Company, appropriated and diverted from said Jordan River, by means of said canal, enough water to fill the same, and that the water so diverted was, during the irrigating season of 1882, and during the irrigating season of each and every year since, has been used by the said plaintiff, The Utah and Salt Lake Canal Company, and its stockholders and grantees, for the irrigation of land in Salt Lake County, for the purpose of growing crops of hay, grain and vegetables thereon, and for domestic use. That the water so diverted and appropriated was then, and now is, necessary for domestic purposes and for the irrigation of said lands, and that the same would be comparatively valueless without said waters.

4th. That in the year 1872, the plaintiff, The South Jordan Canal Company, at a cost of about one hundred and ten thousand (110,000) dollars, constructed an irrigating canal from the Jordan River, at a point near the boundary line between Salt Lake County and Utah County, in Utah Territory, to Hunter Precinct, in Salt Lake County, a distance of about twenty miles. That the said canal is, and was at the time of its completion in 1875, fourteen feet wide at the bottom and three and a half feet deep, and that it was and is of sufficient capacity to convey enough of the water of the Jordan River to irrigate six thousand acres of land. That during the month of May, 1875, the said plaintiff, The South Jordan Canal Company, appropriated and diverted from said Jordan River, by means of said canal, enough water to fill the same, and that the water so diverted was, during the irrigating season of 1875 and during the irrigating season of each and every year since, has been used by said plaintiff, The South Jordan Canal Company, and its stockholders and grantees, for the irrigation of lands in Salt Lake County for the purpose of growing crops of hay, grain and vegetables thereon, and for domestic use. That the water so appropriated and diverted was then and now is necessary for domestic purposes and for the irrigation of said lands, and that the same would be comparatively valueless without said water.

5th. That in the year 1878, the plaintiff, The North Jordan Canal Company, at a cost of about eighty thousand (\$80,000) dollars, constructed an irrigating canal from the Jordan River, at a point near the boundary line between Salt Lake County and Utah County, in Utah Territory, to Brighton Precinct, in said Salt Lake County, a distance of about twenty miles. That the said canal is and was at the time of its completion in 1881, fourteen feet wide at the bottom and three feet deep,

and that it was and is of sufficient capacity to convey enough of the waters of the Jordan River, to irrigate six thousand acres of land. That during the month of May, 1881, the said plaintiff, The North Jordan Canal Company, appropriated and diverted from said Jordan River, by means of a canal, enough water to fill the same, and that the water so diverted was, during the irrigating season of 1881, and during the irrigating season of each and every year since, has been used by the said plaintiff, The North Jordan Canal Company, and its stockholders and grantees, for the irrigation of lands in Salt Lake County, for the purpose of growing crops of hay, grain and vegetables thereon, and for domestic use. That the water so appropriated and diverted was then, and now is necessary for domestic use and for the irrigation of said lands, and that the same would be comparatively valueless without said water.

6th. That in the year 1877 the plaintiff, The Draper or East Jordan Canal Company, at a cost of about one hundred and forty-five thousand (\$145,000) dollars, constructed an irrigating canal from the Jordan River, at a point near the boundary line between Salt Lake County and Utah County, in Utah Territory, to Little Cottonwood Creek, Union Precinct, in said Salt Lake County, a distance of about twenty miles. That the said canal is, and was at the time of its completion in 1883, fifteen feet wide at the bottom and five feet deep, and that it was and is of sufficient capacity to convey enough of the waters of the Jordan River to irrigate eight thousand acres of land. That during the month of May, 1883, the said plaintiff, The Draper or East Jordan Canal Company, appropriated and diverted from said Jordan River, by means of said canal, enough water to fill the same, and that the water so diverted was, during the irrigating season of 1883, and during the irrigating

season of each and every year since, has been used by the said plaintiff, The Draper or East Jordan Canal Company, and its stockholders and grantees, for the irrigation of lands in Salt Lake County, for the purpose of growing crops of hay, grain and vegetables thereon, and for domestic use. That the waters so appropriated and diverted were then, and now are necessary for domestic purposes and for the irrigation of said lands, and that the same would be comparatively valueless without said water.

7th. That in the year 1872 Salt Lake County constructed a dam in Jordan River, near the boundary line between Salt Lake County and Utah County, for the purpose of diverting the waters of said Jordan River from their natural channel and causing the same to flow through the said several canals of the plaintiffs for the uses and purposes aforesaid, and that in 1884 the said Salt Lake County transferred five-sixths undivided interest in said dam to the plaintiffs, who have ever since maintained the same for said purpose, and that its maintenance during all of said time has been and now is necessary to enable the plaintiffs to divert and use the said waters from the Jordan River so appropriated as aforesaid.

8th. That Utah Lake is a body of fresh water about thirty miles in length north and south, by fifteen miles in width east and west, situate between the Wasatch range of mountains on the east and the Oquirrh range on the west. It is in a basin between said ranges of mountains, and received the waters which flow therefrom. From the Wasatch range of mountains there is more copious drainage. The waters from the Wasatch range find their way to said lake through several water courses, among which are Provo and Spanish Fork Rivers. The only outlet from said lake is through said Jordan River. The cities of Provo, Springville and Spanish Fork are situate between said Utah Lake and the Wasatch Mountains,

and between said lake and said last named mountains is a large tract of arable and pasture land; all, or nearly all, of the same annually needs irrigation to render it productive, and said cities also depend on said streams for water supply. North of said lake for fifty miles or more, to the width on both sides of said Jordan River, of twenty miles on an average, the country consists of fertile lands largely occupied by cities and by cultivators of the soil. There are mountain streams running from the said Wasatch range of mountains to said Jordan River, but none from the west. All of said country needs the water of said lake for irrigation, and depends and has immemorially depended altogether thereon by means of plaintiffs' said canals or in addition to the partial supply by the other said streams. During the thirty years last past the population east and north of said lake has been constantly increasing. The settlers east of said lake during said period have diverted a portion of the waters of Provo and Spanish Fork Rivers for irrigation and other purposes, and this diversion has increased from year to year according to the advance of population and land improvement, and to maintain the water supply in said lake, dams have been maintained by said plaintiffs in said Jordan River.

9th. To confirm and regulate the rights of those interested in said water, on or about the ____ day of January, 1885, the land owners on the east side of said lake, of one part, and said plaintiffs for their own interests and to subserve the interests of the large population north of said lake, and having a right to and needing the waters of said lake, entered into the following contract in writing: "THIS INDENTURE, made this ____ day of January in the year of our Lord one thousand, eight hundred and eighty-five, between Joseph H. Colledge, et al, all of Utah County, Territory of Utah, the parties

of the first part, and Salt Lake County, Salt Lake City, the Utah and Salt Lake Canal Company, The South Jordan Canal Company, The North Jordan Canal Company, and the East Jordan Irrigation Company, all corporations in Salt Lake County, in said Territory, the parties of the second part, WITNESSETH: That the said parties of the first part and each of them, for and in consideration of the covenants and agreements hereinafter contained, and the sum of eight thousand dollars to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed and confirmed unto the said parties of the second part, and to their and each of their successors and assigns forever, the right to maintain the dam in the Jordan River, known as the "Jordan Dam," situated at or near the boundary line between Salt Lake and Utah Counties, as at present constructed, an opening or water way through said dam, to be left at all times free and open, except as hereinafter specified, for the passage of water, as follows, to-wit: The width of said opening to be as at present established, including supports and uprights, the whole width, including such supports, being seventy-two feet more or less, the bottom of such opening or water way in said dam to be six inches above or higher than the bottom of the opening or water way in said dam as at present constructed, when free from boards or temporary obstructions. Also the right, free from interference or liability for damage, to flow the lands of the said parties of the first part or either of them, to the extent which the dam as above described may cause the same to be flowed by the waters of the said Jordan River, Utah Lake, or other-

wise. Also the right, in addition to the foregoing, free from liability for damage, to flow the lands of the said parties of the first part, or either of them, to the extent which may be caused by placing obstructions in the water way in said dam hereinbefore mentioned, according to the limitations hereinafter specified, for the purpose of holding back or maintaining the waters in Utah Lake at an elevation or height not to exceed three feet and three and one-half inches above the points heretofore established and recognized as low water mark in said lake, when the waters in said lake would otherwise naturally fall below such height or elevation that the water so held back might be saved for use by the said parties of the second part when needed. The lands as severally owned by the said parties of the first part hereinafter mentioned, and which may be affected by these grants are situated in Utah County, adjacent or near the Utah Lake, in the Territory of Utah, and are more particularly described in "Exhibit A", hereto annexed and made a part of this indenture.

To have and to hold the said granted rights, easements and servitudes, together with all the rights and privileges in anywise pertaining thereto unto the said parties of the second part, and to their and each of their successors and assigns forever.

For the purpose of better carrying the foregoing into effect, it is hereby mutually agreed by and between the parties hereto, that on or before the first day of January in each year the parties hereto shall each respectively appoint two persons, and the four persons thus appointed shall meet together on or before the first day of February in each year and select an umpire, a disinterested person, who must not be a resident of either Salt Lake or Utah Counties, and each of said persons before entering upon the duties herein specified, shall enter into bonds in the sum of two thousand dollars for the faithful

performance thereof, to the satisfaction or acceptance of the Probate Judge of either Salt Lake or Utah Counties. The persons so appointed shall continue to act until others are appointed and qualified to succeed them.

The said persons shall constitute a Board, and are hereby empowered, as the legally constituted agents of the parties hereto, to determine and direct when and to what extent obstructions may be placed in the said water way of the dam, for the purpose of storing the lake with water for future use, not to exceed the highest elevation hereinbefore specified; Provided, That if in any year on or after the 15th day of March, it shall be ascertained by said Board that the fall of snow during the past winter has been light, and if the said Board are of the opinion that the water of Utah Lake will probably not rise during the current season to the highest level hereinbefore mentioned, then the said Board shall permit the said parties of the second part to raise said dam to a height to be fixed by said Board, which will cause the water of said lake to rise to said level, and if it shall be ascertained by experience and observation that the said parties of the second part can obtain all the water necessary for irrigation purposes by keeping the water way of the dam open until the waters of Utah Lake shall have receded below the highest level mentioned, then the said Board shall require the water way to be kept open until the water recedes to such level as the Board shall deem sufficient to supply the said parties of the second part with water; and, Provided, further, That when at any time in each year, to be fixed by said Board, the high water of Utah Lake shall have receded to the highest elevation above herein specified, the parties of the second part shall have the right, without hindrance from any person or persons, to cause the waters of said Utah Lake to be held back by regulating said dam not to exceed

permanently lowered the bed thereof more than fourteen inches, thus increasing the capacity of said river and thereby enabling said plaintiffs to utilize more than fourteen inches more in depth of the waters of said lake, over the entire surface thereof, in seasons of low water. That said plaintiffs by reason of the removal of said bars and other obstructions to the depth aforesaid, are entitled to at all times keep and maintain planks or other obstructions on the floor or sill of the new dam erected by them to the height of twenty-two inches above the floor or sill of said dam and no more, and the Court finds that said planks to the height of twenty-two inches above the floor of the new dam are no more or greater obstruction to the flow of the water in said river than were said bars and other natural obstructions before their removal as aforesaid. The floor of said new dam is found to be six inches lower than the top of the sill of the old dam as fixed by said contract.

13. That the plaintiffs have maintained planks to the height of twenty-two inches and more, above the floor of the new dam, by reason of which the defendants appearing and answering hereto, except George T. Peay, sustained damages to the amount of six thousand dollars, which have been fully paid by the plaintiffs to the said defendants as appearing hereto, except said George T. Peay, which have been paid by the plaintiffs and accepted by said defendants, except George T. Peay, as full compensation for all damages heretofore sustained by the said defendants, except George T. Peay, by reason of any and all obstructions placed by the said plaintiffs in the said Jordan River at said dam or elsewhere.

14. That when at any time in each year the high water of Utah Lake shall have receded to the elevation hereinbefore fixed at a point four feet and six inches below the top of the stone monument near the head of Jordan River, the same being the point re-

ferred to in said contract as "three feet three and one-half inches above the point heretofore established and recognized as low water mark in said lake", the plaintiffs have the right, without hindrance from any person or persons, to keep and maintain planks and other obstructions in either or both of their said dams in Jordan River, and cause the waters of Utah Lake to be held back by regulating said dams to a height not to exceed the elevation hereinbefore designated, and keep said planks or other obstructions in said dams until the same are ordered out by the commissioners referred to in said contract; but said commissioners have no right to order the plaintiffs to remove said planks or other obstructions prior to the first day of October in each year, and if the said commissioners order the removal of said planks or other obstructions after the first day of October in any year, the plaintiffs shall not replace the same until the commission shall so decide, but whenever the water of Utah Lake recedes down to the elevation before designated, the plaintiffs shall have the right to place said obstructions in the river at the dams without the permission of said commissioners. But when at any time on or after the first day of October in any year the said commissioners shall have ordered the plaintiffs to remove said planks or obstructions in said dam, the said plaintiffs shall remove the same, and the waters of said river shall be permitted to run free and unobstructed from such obstructions until the commission shall decide that obstructions may be placed in said dams, or until said waters shall have receded to the elevation hereinbefore designated. The planks and obstructions mentioned in this finding do not refer to the twenty-two inches of planks that the plaintiffs are authorized to keep and

maintain upon the floor or sill of the new dam at all times, as hereinbefore found, but in addition thereto.

15. That the said dams heretofore erected by the plaintiffs in said Jordan River and the fourteen inches of planks hereinbefore authorized to be maintained by the plaintiffs upon the floor or sill of the new dam, and the planks and other obstructions in addition thereto that the plaintiffs are hereinbefore found authorized to put in said river at said dams whenever the water recedes to the elevation hereinbefore designated, are not unlawful obstructions to the flow of said river, but are obstructions that the plaintiffs are lawfully entitled to maintain.

CORRECTED FINDINGS OF FACTS

The District Court of the First Judicial District of the Territory of Utah, in and for the County of Utah, having, on the 3rd day of January, 1896, made and entered its Findings of Facts and Decree in the above entitled action, and the plaintiffs in said cause having appealed to the Supreme Court of the State of Utah from certain portions of said Decree, and the said Supreme Court having heard and determined said appeal, and thereupon reversed said cause and remanded the same, with directions to this Court to correct and modify the Findings of Facts and Decree in accordance with the opinion of said Supreme Court, the 12th finding of facts in the above entitled action is hereby corrected and modified in accordance with the opinion and mandate of said Court, to read as follows:

That the plaintiffs, in the years 1888, 1889, and 1890 removed bars and other obstructions which naturally existed in the bed of the Jordan River at the new dam and at the point known as "New Bar," in the neighborhood of one mile above the new dam created by said plaintiffs in said river, and in such removal removed permanent natural obstructions then in said river above said dam, and permanently lowered the bed thereof more than fourteen inches, thus increasing the capacity of said river and thereby enabling said plaintiffs to utilize, more than fourteen inches more in depth of the waters of said lake, over the entire surface thereof, in seasons of low water. That said plaintiffs by reason of the removal of said bars and other obstructions, to the depth aforesaid, are entitled to at all times keep and maintain planks or other obstructions on the floor or sill of the new dam created by them to the height of twenty-two inches above the floor or sill of said dam and no more, and the Court finds that said planks to the height of twenty-two inches above the floor of the new

dam are no more or greater obstruction to the flow of the water in said river than were said bars and other natural obstructions before their removal as aforesaid. The floor of said new dam is found to be six inches lower than the top of the sill of the old dam as fixed by said contract.

And the 14th finding of facts in the above entitled action is hereby corrected and modified, in accordance with the opinion and mandate of said Court, to read as follows:

That when at any time in each year the high water of Utah Lake shall have receded to the elevation hereinbefore fixed at a point four feet and six inches below the top of the stone monument near the head of Jordan River, the same being the point referred to in said contract as "three feet three and one-half inches above the point heretofore established and recognized as low water mark in said lake," the plaintiffs have the right, without hindrance from any person or persons, to keep and maintain planks and other obstructions in either or both of their said dams in Jordan River, and cause the waters of Utah Lake to be held back by regulating said dams to a height not to exceed the elevation hereinbefore designated, and keep said planks or other obstructions in said dams until the same are ordered out by the commissioners referred to in said contract; but said commissioners have no right to order the plaintiffs to remove said planks or other obstructions prior to the first day of October in each year, and if the said commissioners order the removal of said planks or other obstructions after the first day of October in any year, the plaintiffs shall not replace the same until the commission shall so decide, but whenever the water of Utah Lake recedes down to the elevation before designated, the plaintiffs shall have the right to place said obstructions in the river at the dams without the permission of said commissioners. And when at any time on or after the first day of

October in any year the said commissioners shall have ordered the plaintiffs to remove said planks or obstructions in said dam, the said plaintiffs shall remove the same, and the waters of said river shall be permitted to run free and unobstructed from such obstructions until the commission shall decide that obstructions may be placed in said dam, or until said waters shall have receded to the elevation hereinbefore designated. The planks and obstructions mentioned in this finding do not refer to the twenty-two inches of planks that the plaintiffs are authorized to keep and maintain upon the floor or sill of the new dam at all times, as hereinbefore found, but in addition thereto.

Signed A. C. Hatch

Dated November 5th, 1896

Judge

IN THE DISTRICT COURT FOR THE FIRST JUDICIAL
DISTRICT, UTAH TERRITORY

Salt Lake City, A Municipal
Corporation, et al,

Plaintiffs

vs.

(Judge Hatch Decree)

Joseph R. Colledge, et al
(R. Colledge)

Defendants

- - - - -

The District Court of the First Judicial District of the Territory of Utah, in and for the County of Utah, having on the 3rd day of January, 1898, made and entered its decree in the above entitled action, and the plaintiffs in said cause having appealed to the Supreme Court of the State of Utah from certain portions of said decree, and the said Supreme Court having heard and determined said appeal, and thereupon reversed said cause and remanded the same, with directions to the court to correct and modify the findings of facts and decree in accordance with the opinion of said Supreme Court, and the said findings of facts having been so modified;

It is, Therefore, Ordered, Adjudged and Decreed, that the plaintiffs have the right to maintain the waters of Utah Lake at an elevation four feet six inches (4 ft. 6 in.) below the top of the stone monument near the head of Jordan River which was established by the Utah Lake Commission in 1885, said elevation being the point referred to in the contract set out in the findings of fact herein as "three feet three and one-half inches (3 ft. 3½ in.) above the point heretofore established and recognized as low water mark in said lake."

It is further Ordered, Adjudged and Decreed that a survey shall be made and a permanent monument shall hereafter be established

and maintained at the expense of the plaintiffs in said Utah Lake at a point to be hereafter agreed upon by the parties hereto or fixed by the court, between a point one mile north of Provo River and a point five miles south of the mouth of said river, where it will be least subject to temporary fluctuations of the height of the water by winds or the influx of Spanish Fork or Provo Rivers, to perpetuate said agreed elevation, and that said monument when so established, shall be maintained as the controlling evidence of the elevation at which the water of said lake is authorized to be maintained by the plaintiffs under said contract.

It is further Ordered, Adjudged and Decreed that the plaintiffs are entitled to at all times keep and maintain planks or other obstructions on the floor or sill of the new dam erected by them in the Jordan River, to the height of twenty-two (22) inches above the floor or sill of the new dam, and no more.

It is further Ordered, Adjudged and Decreed that when at any time in each year the high water of Utah Lake shall have receded to an elevation four feet and six inches (4 ft. 6 in.) below the top of the stone monument near the head of Jordan River which was established by the Utah Lake Commission in 1885, the said elevation being the point referred to in the said contract, as "Three feet three and one-half inches (3 ft. 3½ in.) above the point heretofore established and recognized as low water mark in said lake, the plaintiffs have the right, without hindrance from any person or persons to keep and maintain planks or other obstructions in either or both of their dams in Jordan River and cause the waters of Utah Lake to be held back by regulating said dams to a height not to exceed the elevation herein before designated, and to keep said planks or other obstructions in said dams until the same are ordered out by said Commissioners, but said Commissioners have

no right to order the plaintiffs to remove said planks or other obstructions prior to the first day of October in each year, and if the said Commissioners order the removal of said planks or other obstructions after the first day of October in any year, the plaintiffs shall not have leave to replace the same until the Commission shall so decide, but when the water of Utah Lake recedes down to the elevation before designated, the plaintiffs shall have the right to place said obstructions in the river at the dam without permission of said Commissioners.

But when at any time, on or after the first day of October, in any year, the said Commissioners shall have ordered the plaintiffs to remove said planks or obstructions from said dams the said plaintiffs shall remove the same, and the waters of said river shall be permitted to run free and unobstructed from such obstructions until the said Commission shall decide that obstructions may be placed in said dams, or until the said waters shall have receded to the elevations hereinbefore designated.

The planks and obstructions mentioned herein do not refer to the twenty-two inches of planks that the plaintiffs are authorized to keep and maintain upon the floor or sill of the new dam at all times, but are in addition thereto.

It is further Ordered, Adjudged, and Decreed that the said defendants and each of them, except George T. Peay, be and they hereby are perpetually enjoined and restrained from bringing, maintaining or prosecuting any suit for any damage heretofore sustained by them or any of them, by reason of any acts of the plaintiffs or any of them in placing obstructions in the Jordan River at the new dam or elsewhere, or in any way causing the waters of Utah Lake to overflow or otherwise injure the lands or other property of said defendants or any of them,

except said George T. Peay, or by causing any damage to the defendants or any of them, except said George T. Peay, in any way whatever; but this decree shall not in any way prevent the defendants or any of them from bringing any suits against the plaintiffs or any of them for any future violations of the terms of the said contract or of this decree.

It is further Ordered and Adjudged that the parties plaintiffs and defendants shall each pay their own witness fees, and the balance of the costs shall be apportioned as follows, to-wit;

The plaintiffs shall pay one-half ($\frac{1}{2}$) of all other costs, including costs of serving summons on the defendants, clerk's costs and reporter's fees, said one-half of said costs being taxed at one hundred and fifty-one and $\frac{95}{100}$ dollars, and the defendants shall pay the other half of said costs taxed at one hundred and fifty-one and $\frac{95}{100}$ dollars. And the defendants shall pay the costs of the appeal of said cause to the Supreme Court, taxed at \$_____.

Done in open court this 9th day of November A.D. 1896.

A. C. HATCH

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF UTAH, COUNTY OF SALT LAKE.

SALT LAKE CITY et al.,

Plaintiffs,

vs.

JOSEPH H. GILBERT et al.,

Defendants.

AFFIDAVIT.

STATE OF UTAH |
 | ss.
County of Salt Lake. |

Josephine Lewis, being first duly sworn, says that she is of lawful age, and is not interested in any way in the result of this litigation. That on the 29th day of October, 1896, affiant served a copy of the annexed notice of motion in the above entitled action on Mr. H. C. Edwards, one of the attorneys for the defendants, by delivering to and leaving the same with his stenographer, a person of lawful age and discretion in charge of his office in Salt Lake City, between the hours of two and five O'clock p.m. of said day.

That on said 29th day of October, 1896, the said affiant enclosed a copy of said notice in an envelope and addressed the same to Evans & Rogers, Ogden, Utah, and, after prepaying the postage thereon, deposited the same in the post-office at Salt Lake City, and that there is and was at that time a daily mail between Salt Lake City and Ogden.

That on said 29th day of October, 1896, the said affiant enclosed a copy of said notice in an envelope, and addressed the same to Thurman & Wedgwood, Provo, Utah, and after prepaying the postage thereon, deposited the same in the Post-office at Salt Lake City; that on said 29th day of October, 1896, the said affiant enclosed a copy of said notice in an envelope and addressed the same to Charles DeMisey, Provo,

Utah, and after paying the postage thereon, deposited the same in the Post-office at Salt Lake City; that on said 29th day of October, 1896, the said affiant enclosed a copy of said notice in an envelope, and addressed the same to Ira N. Howard, Provo, Utah, and after prepaying the postage thereon, deposited the same in the Post-office at Salt Lake City; that on said 29th day of October, 1896, the said affiant enclosed a copy of said notice in an envelope, and addressed the same to D. D. Hanks, Provo, Utah, and, after prepaying the postage thereon, deposited the same in the Post-office at Salt Lake City; that on said 29th day of October, 1896, the said affiant enclosed a copy of said notice in an envelope, and addressed the same to E. Anderson, Provo, Utah, and, after prepaying the postage thereon, deposited the same in the Post-office at Salt Lake City, and that there is and was at that time a daily mail between Salt Lake City and Provo.

Signed Josephine Lewis

Subscribed and sworn to before me this 4th day of November, 1896.

Signed Joseph T. Richards

Seal

Notary Public

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF UTAH, COUNTY OF UTAH.

SALT LAKE CITY et al.,

Plaintiffs,

vs.

JOSEPH H. COLLARD et al.,

Defendants.

AFFIDAVIT.

STATE OF UTAH

1

ss.

County of Salt Lake. 1

Josephine Lewis, being first duly sworn, says that she is of lawful age, and is not interested in the subject of litigation in this action. That on the 6th day of November, 1896, affiant served a copy of the annexed memorandum of costs upon H. C. Edwards, one of the attorneys for the defendants in the above entitled action, by delivering to and leaving a copy of said memorandum of costs with the stenographer, who was a person of lawful age and discretion, who was then in charge of the law office of said H. C. Edwards, at Salt Lake City, Utah, between the hours of nine o'clock a. m. and four o'clock p. m. of said day.

Affiant further says that on the said 6th day of November, 1896, she served a copy of the annexed memorandum of costs upon Evans & Rogers attorneys for the defendants, by enclosing said copy in an envelope addressed to said Evans & Rogers at Ogden City, Utah, and by prepaying the postage on said letter and depositing the same in the United States Post-office at Salt Lake City, Utah; and that there is a daily mail between Salt Lake City and Ogden, Utah.

Affiant further says that on the said 6th day of November, 1896, she served a copy of the annexed memorandum of costs upon Thurman & Wedgwood, attorneys for the defendants, by enclosing said copy in

an envelope addressed to said Thuman & Wedgwood, at Provo, Utah, and by prepaying the postage on said letter and depositing the same in the United States Post-office at Salt Lake City, Utah; that on the said 6th day of November, 1896, affiant served a copy of the annexed memorandum of costs upon Ira W. Howard, attorney for the defendants, by enclosing said copy in an envelope addressed to Ira W. Howard, at Provo, Utah, and by prepaying the postage on said letter and depositing the same in the United States Post-office at Salt Lake City, Utah; that on said 6th day of November, 1896, affiant served a copy of the annexed memorandum of costs upon Charles Dunsirey, attorney for the defendants, by enclosing said copy in an envelope addressed to said Charles Dunsirey, at Provo, Utah, and by prepaying the postage on said letter and depositing the same in the United States Post-office at Salt Lake City, Utah; and that there is a daily mail between Salt Lake City and Provo, Utah.

Signed Joséphine Lewis

Subscribed and sworn to before me this 7th day of November, 1896.

Signed Joseph T. Richards

Seal

Notary Public

That the items in the above memorandum contained are correct to the best of said affiant's knowledge and belief, and that the said disbursements have been necessarily incurred in said action.

Subscribed and sworn to before me this 9th day of November
A. D. 1896.

Signed. F. S. Richards

Signed E. L. Jones Clerk

REPORT ON RE-ESTABLISHMENT OF COMPROMISE

LEVEL AT UTAH LAKE, MAY, 1939

by

**A. H. LAMSON
ASSISTANT CITY ENGINEER**

**Mr. W. B. Davis
City Engineer
City**

Dear Sir:

Complying with your request for the re-establishment of the compromise level at Utah Lake, I have to report as follows:

The first work done in this connection consisted of a thorough examination of all records available in the City Engineer's office bearing on the original work connected with the initial establishment of what is known as compromise level at Utah Lake. Efforts were made to obtain information from other sources and some information was obtained in the field books belonging to the Utah Copper Company.

An examination of the records above referred to indicated that those in charge of handling operations at the lake were suspicious of the correctness of the elevation of the monument established at Snail Island as early as 1911 and the indications were that this monument had probably settled more or less previous to 1914, when a line of levels was run by Collier and Wente from the Snail Island monument to the Jordan River.

It was also found that there was a more or less definite idea in the minds of those handling the operation of the lake that the original red sandstone monument established by the Utah Lake Commission in 1885 as well as the white sandstone monument established by A. F. Burrows in 1899 at the pumping plant near the head of the Jordan River, had also settled.

After a careful examination of all the records available, I went into the field accompanied by G. V. Gardner for the purpose of finding and observing the conditions of such original monuments as might still be in existence.

On arriving at Skull Island, we found that the monument established by Dorman and Pillsbury in 1899 had been tipped over and was lying on one side probably in the same general neighborhood as where it was originally established. It had been set in a shallow excavation in loose sandy material and as there was lack of any original elevation, the red concrete established by Dorman and Pillsbury in 1895, also having disappeared.

We then examined the places described by Mr. Dorman in his original notes where he had set a red concrete monument on the north side of Smith's Lake and at the Crown Point. In both of these cases we found the original monument, there was no evidence of their ever having been disturbed and they were apparently in the same position as originally established by Mr. Dorman in 1895.

The monument at the pumping plant near the head of the Jordan River established by the Utah Lake Commission in 1895 and the white concrete monument established by Mr. Dorman in 1899 were in good condition and nothing in evidence to indicate whether they may have settled or not.

An attempt was made to find monuments, referred to in various field books, in the Jordan Narrows. We found several monuments, but they could not be definitely connected by information on record with the original work done in establishing Comprise Level.

With this information as a basis, levels were run as hereinafter described.

A field party was formed with G. V. Gardner as levelman, E. McDaniel as rodman, together with a car and chauffeur. The writer was in the field

3- Comparison Level at Utah Lake

with this party a portion of the time.

The instrument used was an Eighteen-Inch Survey Level adjusted to perfect condition and a new Philadelphia rod. In running these levels the length of sights were varied according to the condition of the atmosphere, but the backsight and the foresight for any particular set-up were always made of equal length. This was determined by carefully pacing length of all sights.

During a portion of the time that this work was being done, the party left Salt Lake at 5 a.m., then being able to begin work not later than 6 a.m. Whenever heat waves developed to a point where the rod readings were not positive and definite, work was discontinued, except in one case where the work was continued for a short time after the condition of the air began to be unsettled. This section was re-run later on and a correction made for the amount of error found to exist. Check levels were run over all lines, and the maximum difference in elevation found in the two lines was 0.043 feet.

CONDITIONS AND INCIDENTS LEADING TO THE ESTABLISHMENT OF COMPARISON LEVEL

As early as about 1873 discussions arose between the owners of land along the eastern shores of Utah Lake and the owners of the canals in Salt Lake County deriving their water supply from Utah Lake and Jordan River, as to the maximum elevation at which the water in the Utah Lake should be held. These discussions continued over a period of time eventually culminating in the filing of five suits in the District Court of the First Judicial District of the Territory of Utah, September, 1884, against Salt Lake City and the various canal companies deriving water from the Jordan River in Salt Lake County. Before these suits actually got under way, it was decided to settle the points at issue by means of an arbitration committee. This committee was composed of six men selected by each of the parties to the suit, the

4-Compromise Level at Utah Lake

committee to be presided over by Presidents John Taylor and George A. Cannon. All parties agreed to abide by the decision of this committee.

On February 10, 1895, this committee brought in and filed its report with the Mayor and City Council of Salt Lake. This report was later embodied in an agreement which was signed by all parties concerned.

This agreement, among other things, provided for the appointment of a permanent commission consisting of five members, two to be appointed by the land owners of Utah County and two to be appointed by the canal companies in Salt Lake County, these four to select a fifth member who is not a resident of either Salt Lake or Utah Counties. This committee was designated as legal agent of all the parties concerned, with authority to regulate the flow of the Jordan River in such manner as to prevent the waters of the Utah Lake from being held at an elevation higher than the maximum elevation designated in the agreement, which elevation has since been called Compromise Level. This elevation was defined in the agreement as being at a point 3 feet $3\frac{1}{2}$ inches above low water mark which had previously been indicated by monuments established in the lake.

This commission in 1895 established a red sandstone monument near a log cabin at the head of the Jordan River. This stone being set at an elevation such that the top of the stone was 4 feet 6 inches above Compromise Level as designated in the original agreement above described.

This agreement appears to have eased matters for a short time, but additional suits were soon filed claiming damages for the flooding of land adjacent to the eastern shore of Utah Lake. This is particularly true with regard to the period between 1890 - 1895, when a large number of suits were filed; the details of which are of no interest in connection with the matter under consideration here.

There was one suit, however, which is of interest in this connection,

5-Compromise Level at Utah Lake

it was entitled Salt Lake City, a Municipal Corporation, et-al. vs. Joseph H. Collinge, et-al. In this suit the following stipulation and agreement was made between the parties:

"It is hereby stipulated and agreed by and between the parties to this action that the elevation of three feet three and one-half inches above low water mark referred to in the contract of 1885, in evidence in this case, is at a point four feet and six inches below the top of the stone monument near the head of Jordan River, which was established by the Utah Lake Commission in 1885, as testified in this case by Lemuel Evans, Francis Armstrong, Eliam A. Smith and others; and that the decree of the court shall fix said elevation as being the point referred to in said contract as 'three feet three and one-half inches above the point heretofore established and recognized as low water mark in said lake;' and for this purpose a survey shall be made and a permanent monument shall hereafter be established and maintained at the expense of the plaintiffs, in said Utah lake, at a point to be hereafter agreed upon by the parties hereto or fixed by the court, between a point one mile north of Provo River, and a point five miles south of the mouth of said river, where it will be least subject to temporary fluctuations of the height of the water by winds or the influx of Spanish Fork and Provo Rivers, to perpetuate said agreed elevation; and that said monument when so established shall be maintained as the controlling evidence of the elevation at which the water of said lake is authorized to be maintained by said contract."

6-Supremacy Level at Utah Lake

This case was handled by Judge Wm. H. King and his original decision was promptly appealed to the Supreme Court which sent the case to the District Court with orders to make certain correction. The final decree was written by Judge Hatch on November 5, 1896.

In this decree, we find the following:

"It is Therefore Ordered, Adjudged, and Decreed that the plaintiffs have the right to maintain the water of Utah Lake at an elevation 4 feet 6 inches below the top of the stone monument near the head of the Jordan River, which was established by the Utah Lake Commission in 1885, said elevation being the point referred to in the contract set out in the finding of fact herein as 3 feet $3\frac{1}{2}$ inches above the point heretofore established and recognized as low water mark in said lake."

"It is Further Ordered, Adjudged, and Decreed, that a survey shall be made and a permanent monument shall hereafter be established and maintained at the expense of the plaintiffs in said Utah Lake at a point to be hereafter agreed upon by the parties hereto, or fixed by the Court, between a point one mile north of the Provo River and a point five miles south of said river where it will be least subject to temporary fluctuations of the height of the water by winds or the influx of Spanish Fork and Provo Rivers, to perpetuate said elevation, and that said monument when so established, shall be maintained as the controlling evidence of the elevation at which the water of said lake is authorized to be maintained by the plaintiffs under said contract."

7-Compromise Level at Utah Lake

SURVEY TO ESTABLISH A PERMANENT MONUMENT TO PERPETUATE COMPROMISE LEVEL

In 1895 a survey was made by A. F. Doremus and Charles Delaney for the purpose of establishing a permanent monument to perpetuate the elevations of what is known as Compromise Level in Utah Lake. On the first page of the note book used by Mr. Doremus, we find the following statement:

"Notes by A. F. Doremus of the line of levels run by himself and Charles Delaney between the head of Jordan River and Snail Island under authority of the District Court and for the purpose of establishing a permanent monument on said Island to perpetuate the elevation of what is known as the Compromise Level of Utah Lake; Compromise Level of Lake assumed as having elevation of 100 feet and the red sandstone monument at southwest corner of log cabin at head of Jordan River as having elevation 104.50 feet."

On November 25, 1895, A. F. Doremus and Charles Delaney proceeded to run a double line of levels from the above described sandstone monument at the head of the Jordan River to Snail Island.

In running this line they established a bench mark at the Geneva Resort, described by Mr. Doremus as follows:

"This B. M. consists of a red sandstone 8 inches square and 3 feet long set in the ground so that the top of the stone is about 2 inches above the surface of the ground. The red point is indicated by a cross cut in the top of the stone. The elevation 114.647 is the mean of the two lines of levels. The stone is between the 3rd and 4th tree in a row of poplars south of the wooden steps leading down to the water from the top of the bluff or table on which the pavilion and other buildings at this lake resort stand."

8-Summit Level at Utah Lake

They also set a bench mark on the north shore of Smith's Lake described by Mr. Doreman as follows:

"This B.M. consists of a red sandstone 8 inches square and 3 feet long set in the ground so that the top of the stone is about 3 inches above the surface of the ground. The red point is indicated by a cross cut in the top of the stone. The elevation is 101.831, that being the mean of the two lines of levels. The stone is west of the old river channel and north of the lake, or arm of the lake, at this point, it was set with the view that this might be determined upon as the location of the permanent monument; and too, in the meantime, perpetuate the elevation. After setting this stone we returned to Hub #101 under willow in Knudsen's pasture, previously set as B.M. and from there continued line southward to Snail Island as shown by the notes which here follow:"

At Snail Island they established a bench mark described by Mr. Doreman as follows:

"This B.M. consists of a red sandstone 8 inches square and 3 feet long set in the ground so that the top of the stone is about 3 inches above the surface of the ground. The red point is indicated by a cross cut in the top of the stone. The elevation 101.58 is the mean of the two lines of elevation. The stone is on the crest of Snail Island about one mile south of the Provo Lake Resort; and was set with a view that this might be selected as the site of the permanent monument and to, in the meantime, perpetuate the elevation. The Island is quite narrow at this place as will appear from the cross-section represented by the notes recorded on the next page."

9-Compromise Level at Utah Lake

In 1899, A. F. Doramus and Charles DeWainey established a permanent monument at Smell Island, the original notes of Mr. Doramus read as follows:

"Thursday, December 21, 1899 -- went to Provo accompanied by Frank Gunn and met Mr. Charles DeWainey. Hired a team at Shary's Stable, William Woodhead driver, and went to Smell Island to transfer elevation from temporary to permanent stone monument, recently erected there by DeWainey and myself, under authority of the District Court.

"The monument was similar to the one erected by him at the head of the Jordan River and described on the preceding page. Frank Gunn acted as levelman, DeWainey as roddman and I as note-keeper and photographer."

Mr. Doramus was authorized by the Board of Canal Presidents to erect a permanent monument near the head of the Jordan River in 1899 and his notes regarding this matter are as follows:

"I having been authorized by the Board of Canal Presidents to erect a substantial stone monument on the shores of Utah Lake near the outlet of the Jordan River and after having erected the stone which is a shaft of white sandstone about 6 feet long set 3 feet in the ground, surrounded by a cube of concrete about 6 feet square and projecting about 3 feet above the surface of the ground. The stone is hammer dressed to taper from 14 inches square at the ground line to 10 inches square at the top. The stone presents a quarry face with chisel draft at each of the four corners. A brass plate with the words "Lake Monument" is imbedded in one face of the stone. The

10-Compromise Level at Utah Lake

rod point is a copper bolt set into the stone near its base. For the purpose of transferring the essential point from the old red sandstone, at the southwest corner of cabin, I went to the lake on Wednesday, December 20, 1899 accompanied by George Chaney. From Lehi we were driven to the lake by Mr. William Wing. Chaney handled the level and I the rod. We made the transfer in the manner shown by the following notes."

The notes show that the elevation of the rod point on this monument was 105.985 or 5.985 above Compromise Level.

SHAIL ISLAND MONUMENT

What is known as the Shail Island Monument was established by A. F. Dorman and Charles Delaney in the fall of 1899. The following description is found in the original notes of A. F. Dorman when the work of establishing the monument was completed on December 21, 1899:

"Thursday, December 21, 1899 -- went to Provo accompanied by Frank Gunn and met Mr. Charles Delaney, hired a team at Sharp's Stable - William Woodhead, driver, and went to Shail Island to transfer elevations from temporary to permanent stone monument recently erected by Mr. Delaney. Acting under authority of the District Court. The monument is similar to the one erected by me at the head of the Jordan River and described on the preceding page."

".....and after having erected the stone which is a shaft of white sandstone about 6 feet long set 3 feet in the ground surrounded by a cube of concrete about 6 feet square and projecting about 3 feet above the surface of the ground, the stone is hammer dressed to taper from 16 inches square at the ground line to 10 inches square at the top. The stone presents a quarry face with chisel draft at each of the four corners. A brass plate with the

11- Compromise Level at Utah Lake

words "Lake Monument" is inscribed in one face of the stone. The red point is a copper bolt set into the stone near its base. Frank Cass acted as levelman, Balfour as rodder, and I was note-keeper and photographer. The transfer was made in the manner indicated by the following notes:

These notes show that the metal red point on this monument was found to have an elevation of 102.322 or 2.322 above compromise.

This monument was established on a low ridge in loose sandy material.

The bottom of the monument was not more than 18 inches below the surface of the ground. During the period from 1900 to 1906 inclusive, the maximum yearly elevation of the lake varied from 0.5 feet to 2 feet below compromise. It was sufficiently high for several months each year to saturate the material around this monument. In 1907, the maximum water elevation in the lake was 2 feet above compromise. In 1908 about 0.9 feet above compromise, in 1909 3 feet above compromise, in 1910 2 feet above compromise, in 1911 at compromise, in 1912 one foot below compromise, in 1913 at compromise, and in 1914 1.2 feet above compromise.

It is evident therefore that the base of this monument was saturated for several months each year during the high water season and in most years allowed to drain and dry out during the latter portion of the year. The monument being founded, as it was, on loose sandy material, there is no reason to expect that it would maintain its original position. As proof that it did not maintain its original position, I submit the following evidence:

From the minutes of a meeting of the Utah Lake and Jordan Dam Commission held on January 14, 1911, we find the following:

"Mr. Greer expressed the belief that the present year would be a busy one for the Utah Lake and Jordan Dam Commission.

12-Compromise Level at Utah Lake

Demands had been made in the past for observations to determine the difference, if any, between the records of the monument at Snail Island and the pumping plant, which demands may sooner or later have to be satisfied."

From the minutes of a meeting of the Utah Lake and Jordan Dam Commission held on October 29, 1911, we find the following.

"Utah Lake and Jordan Dam Commission (including all members and secretary) met at Provo on the arrival there, of the morning train on the San Pedro railroad, and proceeded by team to Snail Island, where an observation was taken by Mr. Doremus determining the lake's level to be 2.62 feet below compromise point. W. A. Knight who was present reported that an observation taken by him at the pumping plant this morning under favorable conditions showed the lake level to be exactly 3 feet below compromise point, an apparent difference of 0.38 feet between the two readings."

In the minutes of a meeting of the Utah Lake and Jordan Dam Commission held on January 31, 1914, we find the following:

"Secretary Lambert reported that in accordance with the minutes of the last meeting, he had notified the Board of Presidents by letter that Commissioners Doremus and Hinkley had been appointed by the board to act in their behalf in the matter of erecting a monument at the Steel Bridge west of Lehi and at the Turner Dam and would proceed with the work as soon as assured that the funds to cover the expense would be forthcoming. A reply thereto had been received from the secretary of the Board of Presidents announcing that the funds would be ready whenever the bills for the expense for building the monument should be presented. He had then notified Commissioner Doremus and Hinkley that they were expected to proceed with the work."

13-Compromise Level at Utah Lake

"Commissioner Hinkley explained that his absence from Provo had prevented his acting in the matter, and Commissioner Doremus explained that he had requested the City Engineer who had an organized force under his direction to proceed with the work as he and Commissioner Hinkley would direct. Some obstacles had been met with which prevented the work from being done and he had suggested to the City Engineer that he might level down from the monument at the pumping plant to the bridge and to the Turner Dam and get the data with sufficient accuracy to serve the purpose of the canal companies pending the establishment of permanent monuments to indicate compromise level and he thought probably that had been done. He had the promise of the Engineer that he would be notified when the Engineer was ready to proceed with the work and then he and Commissioner Hinkley will be on hand to direct."

In the minutes of a meeting of the Utah Lake and Jordan Dam Commission held on August 19, 1912, we find the following statement:

"Commissioner Hinkley stated that the Snail Island monument needed looking after and repairing."

The following is a copy of a letter written by Sylvester Q. Cannon, Chairman of the Board of Presidents to the Utah Lake Commission dated March 4, 1922:

"In connection with the matter of the monuments governing the elevation of the water surface of Utah Lake, you will remember that we determined some 9 years ago that there was a difference of elevation of the monument at the pumping plant and that at Snail Island of about 4 inches, the elevation of the Snail Island monument being that much lower than that at

the pumping plant.

"In view of the fact that the original monument is located within 50 feet of the present monument, that the elevation of this present monument was determined from that old stone and that the levels were carried from that point around the lake, a distance of several miles to the Snail Island monument, we are certain that any difference in the elevations of these two points is due either to inaccuracy in levels or to settlement of the Snail Island monument on account of its insecure foundation.

"That this latter is the case would appear to be proven also by the fact that the Snail Island monument has settled .7 of a foot, or about 8.4 inches since the joint levels were run under the direction of your honorable body by Messrs. Collier and Wentz in 1914. This fact was determined by a survey made by Messrs. T. F. Wentz and W. A. Knight on March 28, 1921,

"In the report the statement is made that the Snail Island monument is undermined on the west and slightly inclined to the west, the ground around the base being lake sand.

"In behalf of the Board of Canal Presidents, therefore, I take occasion to call this matter to your attention, and to suggest the importance of definitely establishing the Pumping Plant monument as the correct datum for the determination of lake elevations."

In a letter from the Utah Lake Commissioner to Sylvester Q. Cannon, Chairman of the Board of Canal Presidents dated February 18, 1918, recommendation #2 reads as follows:

"That the difference claimed to exist in the elevation between the monument at the head of Jordan River (known as Lehi monument) and the monument near the mouth of Provo River (known as the

15-Compromise Level at Utah Lake

Snail Island monument) be reconciled and that thereafter both monuments be equally recognized as the official point for determining the compromise points of Utah Lake."

Recommendation #3 reads as follows:

"That the elevation essential to the administration of the contract known as the compromise be perpetuated by the establishment of a permanent bench mark on the new concrete dam at Jordan Narrows as contemplated by the Court Commissioner J' Fewson Smith. A copy of which is herewith enclosed after the accuracy of the said elevation shall have been verified."

From the above quotations, it is evident that there was a doubt in the minds of those connected with the operation of Utah Lake as early as 1911, as to the reliability of the elevations obtained from the Snail Island monument. This culminated in the determination in 1921, by T. F. Wentz and W. A. Knight under the direction of the Board of Canal Presidents that the Snail Island monument had settled 0.69 feet.

It is evident therefore that in 1914, when Wentz and Collier ran a line of elevations from Snail Island to the Jordan Narrows that their assumption, that the elevation of the Snail Island monument was at that time the same as when established by Doremus and Deloisey in 1899, was erroneous. The error of this assumption is proven further by the fact that Collier and Wentz found the Smith Lake monument established by Doremus in 1895 to be 0.454 feet high and the Geneva monument established by Doremus 0.488 feet high. It is evident therefore that the Snail Island monument has already settled approximately one-half foot when Collier and Wentz used it as the basis of elevations for the line which they ran to the Jordan Narrows for the purpose of re-establishing the compromise elevation.

Compromise Level at Utah Lake

COMPARISON OF U.S.G.S. ELEVATIONS OF 1922 & 1923

WITH PRESENT ELEVATIONS JUST COMPLETED

MAY 1939

In 1922 and 1923 the U.S.G.S. established the bench mark at Lehi located about 600 feet south of the D. & R.G.W. Station with an elevation of 4551.025.

At this time they also determined the elevation of the white sandstone monument at the pumping plant at the head of the Jordan River, the elevation being 4494.973. The difference in elevation of these two monuments at that time was therefore 56.052 feet.

In our elevations just completed, based on the original Doremus datum, our elevation of the Lehi monument H-1, 1922 was found to be 161,961 and our elevation of the white sandstone monument at the pumping plant was found to be 105,611 showing a difference in elevation of 56.350 feet.

The white sandstone monument has therefore settled 0.298 feet since 1922.

At the same time that the above work was done, the U.S.G.S. determined the elevation of the Knight monument at the pumping plant to have an elevation of 4491.996 which is 59.029 feet lower than the Lehi monument H-1, 1922.

Our elevations just completed show that the Knight monument at the pumping plant is 59.147 feet lower than the Lehi monument H-1 - 1922. The Knight monument has therefore settled 0.118 feet since 1923.

The U.S.G.S. at this time also determined the elevation of the U.S.G.S. Gaging Station monument located 100 feet west of the gate leading to the pumping plant and 60 feet east of the bridge over the Jordan River and found this elevation to be 4492.336. This bench mark was therefore 58.689 feet lower than the Lehi monument H-1, 1922.

Our elevations just completed show that this monument is 58.742 feet lower than the Lehi monument H-1, 1922 which indicates a settlement of

17-Compromise Level at Utah Lake

the Gaging Station monument since 1923 of 0.033 feet.

In April 1935, C. V. Gardner took elevations on the Gaging Station monument located 100 feet west of the gate leading to the pumping plant and also on the white sandstone monument at the pumping plant and found that the white sandstone monument was 2.429 feet higher than the Gaging Station monument. Our elevations just completed, show that the white sandstone monument is 2.392 feet higher than the Gaging Station monument which indicates a settlement of the white sandstone monument since April 1935 of 0.037 feet.

In 1914 Collier took an elevation on a U.S.G.S. monument set on a point of a ridge about 1100 feet east of the pumping plant; he also took an elevation on the white sandstone monument at the pumping plant. These elevations show that the white sandstone monument at the pumping plant was 0.755 feet lower than the U.S.G.S. monument at the point of the ridge.

In 1935, C.V. Gardner took elevations on these same two monuments and found that the white sandstone monument at the pumping plant was 1.179 feet lower than the U.S.G.S. monument on the point of the ridge which indicates a settlement of the white sandstone monument between 1914 and 1935 of 0.424 feet.

The following is a copy of a letter written by A. B. Purton to W. A. Knight, January 19, 1939;

"I have been comparing the level notes attached to your letter of August 4 with the results of previous levelling from 1916 to date.

"The elevation of the Lake monument bench mark (copper bolt on the stone obelisk) tied into the 1912 adjustment of the Coast & Geodetic Survey precise level net by primary levelling in 1923 was 4494.973 feet above mean sea level. The elevation of the gaging station bench mark as determined at the same time was 4492.336 feet above M.S.L.

18-Compromise Level at Utah Lake

"Using this elevation for the Lake Monument bench mark Jordan & Knight on April 14, 1916 (apparently before the station B.N. was installed) determined the elevation of the zero of the river gage to be 4484.54 feet.

"Later levelling using the elevation of the station B.N. as 4492.336 feet has given the following results for the elevation of the zero of the river gage:

Dickson	Dickson	Knight	Wilson	Rev. & Gottrell
11-18-22	5-15-22	9-20-22	10-19-22	8-9-33
4484.516	4484.516	4484.516	4484.536	4484.571

"The 1933 leveling if we assume the elevation of the Lake Monument 4494.973 gives the elevation of 0. of gage 4484.73 (In other words, I think the lake monument had sunk about 0.2 feet between 1923 and 1933).

"Comparing these results with Jordan's determination on April 14, 1916 leads us to the conclusion that the river gage has not moved and that it is safe to call the elevation of the zero of this gage 4484.54 above N.S.L.

"No one since Jordan in 1916 has been able to run between the Lake Monument and the river gage and check this elevation but all have been able to check the river gage from the station B.N. with differences ranging from -0.004 plus .031 of a foot from the elevation 4484.54 feet.

"If anything has moved the evidence seems to point to the Lake Monument as the "guilty party". While a movement of that monument may not be impossible there is also the possibility of errors in running the levels between the Lake and gaging station bench marks due to the longer line and more set ups.

19-Compromise Level at Utah Lake

"The Lake Monument B.M. has always been considered as 5.985 feet above "Compromise". Subtracting this amount from Harris' (1923) elevation of 4494.973 gives "Compromise" elevation as 4488.988 feet above M.S.L. assuming that the Lake Monument had not moved. With that assumption and using the above figures the zero of the river gage is at $4488.988 - 4484.54 - 4.45$ feet below "compromise".

We have, therefore, evidence from several sources, to prove that all the monuments at the pumping plant have settled since they were built, the only thing remaining is to determine the amount of the settlement.

Proof that the Smith's Lake and Geneva Monuments are the same elevation now as when set by Doremus in 1895 is as follows:

C. V. Gardner's levels which have just been completed, May, 1939, show that they are the same relative elevation within 0.006 feet, as reported by Doremus in his original notes of 1895.

Collier's levels, run in 1914, show that his elevations are 0.488 feet above the Doremus elevations of 1895, but when he gets to the Jordan Narrows his elevations are only 0.124 feet above the C. V. Gardner levels, which are a reproduction of the original Doremus levels, showing that Collier's elevations gradually raise as they approach the narrows, the total raise between Geneva and the Jordan Narrows being 0.364 feet.

The distance from Geneva to American Fork is approximately $1/3$ of the distance from Geneva to the Jordan Narrows, his line would therefore have raised $1/3$ of 0.364 feet or 0.121 feet between Geneva and American Fork. If Collier's line had been parallel to the Doremus and C. V. Gardner lines, his elevation of the American Fork monument would have been 177.230 plus 0.121 - 177.351, which gives a difference in elevation between the Geneva monument and the American Fork monument in 1914 of

20-Compromise Level at Utah Lake

177.951 - 115.135 - 62.216 feet.

In 1939, G. V. Gardner's elevations show a difference of elevation of these two monuments of 176.862 - 114.654 - 62.208 feet which proves definitely that there has been no change in the elevations of the Geneva or Smith's Lake monuments since they were set by Doremus in 1895

LIST OF BENCH MARKS - SNAIL ISLAND TO JORDAN MARROWS

<u>DESCRIPTION</u>	<u>ELEV. BY DOREMUS 1895</u>	<u>ELEV. BY COLLIER 1914</u>	<u>ELEV. BY G.V. GARDNER 1939</u>
Snail Island Monument (1889)	102.322	102.322	wrecked
Smith's Lake, north shore, 8"x8" red sandstone, top about 3" above surface of ground red point indicated by a cross cut in top of stone, set by Doremus.	101.831	102.285	101.837
Geneva B.M. established by Doremus red sandstone 8"x8" top 2" above ground surface red point indicated by a cross cut in top of stone.	114.647	115.135	114.654
U.S.Coast & Geodetic, V-17 about 2 feet east of R.M. fence on west side of track east of old Geneva Resort north of old gate.			114.315
U.S.G.S. B.M. 200 feet south of American Fork Station Bldg. set in 1910, no number, 18" west of concrete walk on west side of road.		177.230	176.862
U.S.G.S. B.M. H-1 - 1922 about 600' south of Lehi R.M. Station on east side of track 2 feet east of private fence.			161.961
B.M. on top of capped pipe set in concrete for State Road right-of-way marker on east side of Saratoga road about 90 feet south of intersection with Lehi Fairfield Road top of cap about 4 inches above concrete			115.532

21-Compromise Level at Utah Lake.

<u>DESCRIPTION</u>	<u>ELEV. BY DORRIS 1895</u>	<u>ELEV. BY COLLIER 1914</u>	<u>ELEV. BY C. F. SANDER 1939</u>
B.M. top of concrete Sec. corner for sections 24, 25, 19, and 30 between range 1 E. and Range 1 W. T. 5 S. about 1/2 mile east of pumping plant top of metal disk about 75 feet south of Main Saratoga Highway between new road and old road.			104,229
U.S. G and G. Survey V.M. K-41, 1934 at pumping plant head of Jordan River about 80 feet east of east bank of Jordan River and about 7 feet north of Dyck stone house building, concrete monument with metal disk in top.			104,992
Lake Monument set by Dorris in 1899 white sandstone set in concrete base, red point in copper bolt set into the stone near its base 23 1/2 feet S.E. of red sandstone monument set by Utah Lake Commission in 1885.	105,985	106,277	105,611
B.M. Red sandstone monument set by Utah Lake Commission in 1885 located 23.5 N.W. from white sandstone monument and 77.3 feet S.W. from the S.W. Corner of Shelton's House and 51.7 feet easterly from the N.E. Corner of pumping plant building.		104,500	104,102
B.M. Knight Monument, copper bolt set in concrete base 18" under surface of ground front of Shelton's house 35.5 feet south of south wall of house 50.8 feet Northeasterly of white sandstone monument.			102,814
U.S.G.S. B.M. Marked gaging station metal disk set in top of concrete post 100 feet west of gate leading to pumping plant 60 feet east of bridge over Jordan River about seven feet south of south edge of highway paving Saratoga road.			103,219

22-Compromise Level at Utah Lake

<u>DESCRIPTION</u>	<u>ELEV. BY DOUGLAS 1995</u>	<u>ELEV. BY COLLIER 1934</u>	<u>ELEV. BY O.V. GARDNER 1979</u>
B.M. Yellow sandstone monument 8"x8" red point marked by cross on top of stone located 232.6 feet northeasterly from the north east corner of Steel Bridge over the Jordan River and the Lahi Fairfield road 3 feet north of fence on north side of road.		108.390	108.387
B.M. on the west side of old Indian Ford Dam red sandstone 8"x8" on top found 6 inches underground about 45 feet west of the west bank of the river.		107.535	107.392
U.S.G.S. B.M. 2 inch galvanized pipe with cap marked U.S.G.S. 324-78, 4506.95 on the east bank of the Jordan River about 60 feet S.W. of the east abutment of the old Indian Ford Dam.		120.575	120.475
B.M. 4 inch pipe filled with concrete (concrete about 0.02' below top of pipe) east of old road west side of Jordan River about 300 feet west of Intake to East Jordan Canal elevation taken on top of concrete.		99.600	99.453
B.M. on weir crest of east 24 foot opening of new City Dam at the Jordan Narrows at the intake of the Utah and Salt Lake and the East Jordan Canals.		94.640	
B.M. on weir crest of west 24 foot opening of new City Dam at the Jordan Narrows at the intake of the Utah and Salt Lake and the East Jordan Canals.		94.640	94.543
B.M. Bronze cap on northwest cap of City Dam at Jordan Narrows marked with cross in top of cap		105.047	104.923
U.S.G.S. B.M. E-3, 1922, metal cap set in top of concrete in S.W. corner of new City Dam at the Jordan Narrows at intake to Utah and Salt Lake and the East Jordan Canals.			104.923
B.M. on top of coping directly over the rail ice breaker on the upstream end of center pier of twin arch bridge over the Jordan River about 100 feet down stream from the new City Dam.			99.513

CONCLUSIONS

1 - The evidence heretofore outlined shows that the Snail Island monument had settled 0.69 feet in 1921 as indicated by levels run by Wentz and Knight. It is also shown by the Collier levels run in 1914 that the Snail Island monument had, at that time settled approximately one-half foot. It is also shown that the Snail Island monument is at present entirely disrupted and is lying on one side in the general neighborhood in which it was originally established. The red sandstone monument set by Doremus and DeMoisey in 1895 near the point at which the permanent Snail Island monument was established has also disappeared. There is no evidence as to when these monuments were removed from their original position.

2 - It is definitely proven in this report that the Geneva and Smith's Lake monuments are at the same elevation as when established by Doremus and DeMoisey in 1895, and these are the only monuments connected with the original establishment of Compromise Level, that we have been able to find and as long as they are in the original position as established, they furnish sufficient information from which to permanently re-establish Compromise Level.

On the list of bench marks attached, all the elevations shown are referred to the original Doremus and DeMoisey datum, 1895, when the original levels were run from the sandstone monument established by the Utah Lake Commission in 1885 to Snail Island, under orders from the District Court for the purpose of establishing Compromise Level at a point to be selected later. Under the Column headed "Elevations by C. V. Gardner, 1939", will be found the true elevations of bench marks listed, as referred to the original Compromise Level of 100.0 feet assumed by Doremus and DeMoisey in 1895.

3 - It is proven by the evidence in this report that the original red sandstone established by the Utah Lake Commission in 1885 and the white sandstone

24- Compromise Level at Utah Lake-Conclusion

monument established by Doremus in 1899, under authority of the Board of Canal Presidents, both of which are located at the pumping plant near the head of the Jordan River, have settled and it is indicated that this settlement was commenced after 1916. The new levels as described under #2 show the true elevation of these monuments with reference to the original Compromise Level.